

A DIGEST OF INDIAN LAW CASES;

CONTAINING

HIGH COURT REPORTS,

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,
1901-1903.

WITH AN INDEX OF CASES;

BEING A SUPPLEMENT TO MR. J. V. WOODMAN'S CONSOLIDATED DIGEST OF
INDIAN LAW CASES, 1836-1900.

COMPILED, UNDER THE ORDERS OF THE GOVERNMENT OF INDIA,

BY

F. G. WIGLEY,

OF THE INNER TEMPLE, BARRISTER-AT-LAW, AND SECRETARY TO THE BENGAL LEGISLATIVE
COUNCIL.

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PREFACE.

THIS volume is published as a supplement to Mr. J. V. Woodman's Consolidated Digest of Indian Law Cases, 1836-1900. It contains the cases reported in the Indian Law Reports for 1901-1903, the Law Reports (Indian Appeals) for 1901 to 1903, and the Calcutta Weekly Notes for 1900-1903 (Vols. 5 to 7), except a small number of those cases which are included in Mr. Woodman's Digest.

2. The principal object kept in view in compiling this Volume has been to place the cases under the heads selected by Mr. Woodman for previous similar cases, this being obviously necessary for facilitating reference from one volume to another, and in view of the future amalgamation of the present volume with the preceding volumes. The next object in order of practical importance has been to insert numerous and full cross-references from one head to another. In other respects Mr. Woodman's plan of work has been followed, but some changes have been made which it is hoped may prove useful. They are as follow :—

- (1) for every case which is digested in this volume, and for many which are referred to in the volume, the year in which the case was decided is entered ;
- (2) wherever a case digested in this volume is published in two or more Reports (*e.g.*, I. L. R., Calc. ; Q. W. N. ; and L. R., I. A.), the Report from which the head-note is taken is noted first, and the prefix *s.c.* is inserted before the references to the other Reports ;
- (3) words and phrases which are expounded in the Reports are entered in a separate list, in alphabetical order, under the head " Words" ;
- (4) short lines have been prefixed to the several entries, to indicate that they fall under a major or minor head ; longer lines have been prefixed to indicate that entries fall also under the short head-note which is printed in small

- antique type at the beginning of the first of a series of preceding entries ;
- (5) where cross-references are made to different minor heads of the same major head, the major head has been printed once only, the minor heads being printed in line under it.

F. G. WIGLEY.

CALCUTTA ;

The 9th November, 1905

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HIGH COURT, CALCUTTA, 1901-1903.

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5. SETTING ASIDE SALE—

- (a) IRREGULARITY.
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3. JOINT PROPERTY.
4. MORTGAGED PROPERTY.
5. PURCHASERS, TITLE OF.
6. DISTRIBUTION OF SALE-PROCEEDS
7. INVALID SALES—

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8. SETTING ASIDE SALE—

- (a) GENERAL CASES.
- (b) IRREGULARITY
- (c) SUBSTANTIAL INJURY.

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2. WHEN SANCTION MAY BE GRANTED.
3. NOTICE OF SANCTION.
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SECURITY FOR GOOD BEHAVIOUR. SENTENCE.

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Separate Charges.

Separate Offences

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Shares.

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SMALL CAUSE COURT, MOFUSSIL.

1. JURISDICTION—
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IMMOVABLE PROPERTY.
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MISSE PROFITS.
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TITLE, QUESTION OF.
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1. JURISDICTION—
(a) BREACH OF PROMISE OF MARRIAGE
(b) IMMOVABLE PROPERTY.
2. PRACTICE AND PROCEDURE—
(a) NEW TRIAL
(b) REFERENCE TO HIGH COURT.
(c) RE-HEARING.

Solicitor

Soma^j.

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Sonthal Parganas Settlement Regulation (III of 1872)

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1. ORDERS SUBJECT OR NOT TO APPEAL.
2. SMALL CAUSE COURT SUITS—
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 - (b) REVENUE.
 - (c) TITLE, QUESTION OF.
3. GROUNDS OF APPEAL—
 - (a) QUESTIONS OF FACT.
 - (b) EVIDENCE, MODE OF DEALING WITH.
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 - (a) DISCRETION, EXERCISE OF.
 - (b) VALUATION OF SUITS.
 - (c) PROCEDURE.
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Special Leave to appeal.

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5. SETTING ASIDE SALE—

- (a) IRREGULARITY.
- (b) PARTIES.

Sale for arrears of road-taxes.

Sale in execution of certificate under Bengal Act VII of 1860.

Sale in execution of certificate under Bengal Act I of 1895.

SALE IN EXECUTION OF DECREE.

1. IMMOVABLE PROPERTY.
2. ERRORS IN DESCRIPTION OF PROPERTY SOLD.
3. JOINT PROPERTY.
4. MORTGAGED PROPERTY.
5. PURCHASERS, TITLE OF.
6. DISTRIBUTION OF SALE-PROCEEDS.
7. INVALID SALES—

FRAUD.

8. SETTING ASIDE SALE—

- (a) GENERAL CASES.
- (b) IRREGULARITY.
- (c) SUBSTANTIAL INJURY.

9. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE-MONEY.

SALE OF GOODS.

Sale-proceeds

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Samples.

Sanction

SANCTION FOR PROSECUTION.

1. WHERE SANCTION IS NECESSARY, OR OTHERWISE.

Sapindas

Scheduled Districts Act (XIV of 1874)

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Seal Warrant

Search by Police.

Search-warrant

Second Appeal

SECRETARY OF STATE

Security.

SECURITY FOR COSTS.

SECURITY FOR GOOD BEHAVIOUR. SENTENCE.

Separate Acquisition.

Separate Charges

Separate Offences.

Separate Property.

Servant.

Service of Process.

SERVICE TENURE.

Sessions Judge.

SESSIONS JUDGE, JURISDICTION OF. SET-OFF.

1. GENERALLY.
2. CROSS-DEBITS.

Settlement.

Share.

Shares

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Ship, arrest of.

Shipping Document.

SIGNATURE.

Sikhs.

SLANDER.

Small Cause Court.

SMALL CAUSE COURT, MOFUSSIL.

1. JURISDICTION—
ATTACHMENT.
DAMAGES.
IMMOVABLE PROPERTY.
MAINTENANCE.
MENS PROFIT.
RENT.
TITLE, QUESTION OF.
TRUSTS.
WRONGFUL DETRAINT.

2. PRACTICE AND PROCEDURE—

SMALL CAUSE COURT—PRESIDENCY TOWNS.

1. JURISDICTION—
(a) BREACH OF PROMISE OF MARRIAGE.
(b) IMMOVABLE PROPERTY.
2. PRACTICE AND PROCEDURE—
(a) NEW TRIAL.
(b) REFERENCE TO HIGH COURT.
(c) RE-HEARING.

Solicitor.

Somaj

Southal Parganas Justice Regulation (V of 1893).

Southal Parganas Settlement Regulation (III of 1872).

Special Leave to appeal

SPECIAL OR SECOND APPEAL.

1. ORDERS SUBJECT OR NOT TO APPEAL.
2. SMALL CAUSE COURT SUITS—
 - (a) MISSE PROFITS
 - (b) RENT.
 - (c) TITLE, QUESTION OF.
3. GROUNDS OF APPEAL—
 - (a) QUESTIONS OF FACT.
 - (b) EVIDENCE, MODE OF DEALING WITH.
4. OTHER ERRORS OF LAW OR PROCEDURE—
 - (a) DISCRETION, EXERCISE OF.
 - (b) VALUATION OF SUIT.
 - (c) PROCEDURE
5. PROCEDURE ON SPECIAL APPEAL.

Special Damage

Special Leave to appeal

Special Police Officer

SPECIFIC PERFORMANCE.**SPECIFIC RELIEF ACT (I OF 1877).**

Splitting Cause of Action.

Splitting Offences.

Stamp.

STAMP ACT (I OF 1878).**STAMP ACT (II OF 1899).**

Statute.

STATUTES, CONSTRUCTION OF.

Statutory Powers

Stay of Execution

Stay of Proceedings

Stocks.

STOLEN PROPERTY.

1. OFFENCES RELATING TO
2. DISPOSAL OF, BY THE COURT

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Stridhan.

Striking off Proceedings

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SUBORDINATE JUDGE, JURISDICTION OF.

Subordinate Magistrate.

Substantial Injury

Substantial Question of Law.

Substitution of Parties

SUCCESSION.**SUCCESSION ACT (X OF 1865).****SUCCESSION CERTIFICATE ACT (VII OF 1889).**

Succession (Property Protection) Act, 1841

Sudras

Suit.

Suits Valuation Act (VII of 1897).

Summary Procedure.**SUMMARY TRIAL.**

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SUMMONS, SERVICE OF.**SUPERINTENDENCE OF HIGH COURT.**

Supreme Court, Calcutta.

SURETY.

1. LIABILITY OF SURETY.
2. ENFORCEMENT OF SECURITY.
3. DISCHARGE OF SURETY.

Surrender.

Survey Act

Survivorship.

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Tahsildar.

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Tank.

TAX.

Tahsildar.

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Tenancy in Common.

Tenant.

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TENURE.

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Testator.

THEFT.**THUMB IMPRESSIONS.****TITLE.**

1. EVIDENCE AND PROOF OF TITLE
2. MISCELLANEOUS CASES.

Title-deeds

Tolls

Tort.

Tort-feasors.

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TRANSFER OF CIVIL CASE.

1. GENERAL CASES
2. LETTERS PATENT, HIGH COURTS, 1865, CL. 13.

TRANSFER OF CRIMINAL CASE.

1. GENERAL CASES.
2. LETTERS PATENT, HIGH COURTS, 1865, CL. 23.
3. GROUND FOR TRANSFER.

TRANSFER OF PROPERTY.

TRANSFER OF PROPERTY ACT (IV OF 1882).

Trees.

Trespass.

Trespasser.

TRIBUTARY MAHALS OF ORISSA.

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Trust Property.

Trustee.

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UNLAWFUL ASSEMBLY.

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VALUATION OF SUIT.

1. SUITS.

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Value of Property.

VARIANCE BETWEEN PLEADING AND PROOF.

1. GENERAL CASES.

2. SPECIAL CASE.

Vatan.

VENDOR AND PURCHASER.

1. BREACH OF COVENANT.

2. INVALID SALES.

3. VENDOR, RIGHTS AND LIABILITIES OF.

4. MISCELLANEOUS CASES.

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1. GENERAL CASES.

2. POWER TO INTERFERE WITH VERDICTS

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Village Chaudhars Act (Bengal Act VI of 1870).

Village Magistrate.

Village Officers.

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Wajib-ul-urz.

Waqf.

Warrant.

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WARRANT OF ARREST.

1. CIVIL CASES

2. CRIMINAL CASES.

WARRANT OF ATTACHMENT.

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WARRANTY, BREACH OF.

Waste.

Waste Lands.

Water.

Way.

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Whipping Act (VI of 1864).

Widow.

Wife.

WILL.

1. VALIDITY OF WILL.

2. CONSTRUCTION

Window.

Withdrawal of Appeal.

Withdrawal of Criminal Proceedings.

Withdrawal of Sanction to build.

WITHDRAWAL OF SUIT.

WITNESS—CIVIL CASES.

1. SUMMONING AND ATTENDANCE OF WITNESSES

2. EXAMINATION OF WITNESSES—

CROSS-EXAMINATION.

3. CONSIDERATION AND WEIGHT OF EVIDENCE

WITNESS—CRIMINAL CASES.

1. PERSONS COMPETENT OR NOT TO BE WITNESSES.

2. SUMMONING WITNESSES.

3. STATEMENTS OF WITNESSES.

4. EXAMINATION OF WITNESSES—

(a) GENERALLY.

(b) EXAMINATION BY COURT.

(c) CROSS-EXAMINATION.

Woman.

Words.

Written Statement.

Wrong-doers.

WRONGFUL CONFINEMENT.

Wrongful Distraint.

Wrongful Gain or Loss

WRONGFUL RESTRAINT.

Youthful Offender.

ZAMINDAR, RIGHTS OF.

ZAMINDARI DARS.

ZANZIBAR.

OF

AND

1901-1903.

ABANDONMENT.

—of children—

—*Penal Code (Act XLV of 1860), s. 317—Exposure of child with intention to abandon—Ingredients of offence.*—Upon a charge being preferred against a mother, of exposure and abandonment of her child, under s. 317, Indian Penal Code, the Sessions Judge believed that the accused had left the child at a particular spot with the

found and looked after. Held that the acquittal was wrong. The gist of the offence under s 317 is the offence of leaving the vehicle on the highway.

—of issue—

See PLEADER—AUTHORITY OF, TO BIND CLIENT . . . L. R., 29 I. A., 76

— of part of claim—

See RELINQUISHMENT OF, OR OMISSION
TO SUE FOR, PORTION OF CLAIM.

—of tenancy—

See LANDLORD AND TENANT—ABANDONMENT, RELINQUISHMENT OR SURRENDER OF TENANCY

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

See ABATEMENT OF SUIT—APPEALS

ABATEMENT OF RENT.

*See EVIDENCE—PAROL EVIDENCE—VARY-
ING OR CONTRADICTING WRITTEN
INSTRUMENTS . . . 6 C. W. N., 60*

See N.-W. PROVINCES RENT ACT (XII OF 1891), CH. II AND s. 93.

[L. L. R., 23 ALL, 270]

See SALE IN EXECUTION OF DECREE—
 ERRORS IN DESCRIPTION OF PROPERTY
 SOLD . . . I. L. R., 29 Cal., 370

—Landlord and tenant—Land Acquisition Act (I of 1894).—Patnidar, whether entitled to abatement of rent and compensation—Proportion—Principle.—Where a portion of a patni is acquired by Government under the Land Acquisition Act, the patnidar is entitled to abatement of rent at the hands of the samindar, as the land taken up by Government is absolutely lost to the patnidar; and he is also entitled to some share of the compensation money. Principle as to the rule of proportion as to abatement of rent and amount of compensation discussed. *Burdwan Raj case, S. D. A. for 1860, C. 236 S. P. J. v. P. S. D. A. for 1860, C. 236 S. P. J.*

ABATEMENT OF SUIT.

1 SUITS	2
2 APPEALS	3

1. SUITS

—Civil Procedure Code, ss 368, 538 (19)—Death of one of several defendants—Order declaring

ABATEMENT OF SUIT—continued.**1. SUITS—concluded.**

under s. 538 (19) of the Code. Where a defendant to a suit for the recovery of a mortgage-debt who was on the record as a surety personally for the payment of the mortgage-money, died, and the plaintiff declined to place on the record such defendant's legal representative, it was held that this only amounted to a waiver of the plaintiff's rights as against the surety, and did not preclude him from continuing the suit against the mortgagor. The suit did not abate. *MANDI HOSAIN v. SUGRA BEGAM* (1902) . I. L. R., 25 All., 208

2 APPEALS.

1—Death of appellant—Civil Procedure Code (XIV of 1892), ss. 351 and 532—Death of appellant after appeal filed, but before hearing of appeal—Defamation—Maxim "actio personalis moritur cum persona"—Practice—In a suit for defamation, the plaintiff obtained a decree for damages against the defendant, and executed the decree. The defendant filed an appeal, but died before the hearing. His son and legal representative was placed on the record as appellant. When the

2 ——— Civil Procedure Code, ss. 361, 362, 363, 541 and 532—Parties—Death of one of several appellants—Survival of right of appeal—Abatement of appeal.—Where several plaintiffs or defendants jointly appeal against a decree to which

the appeal as a whole to abate. *Chandrasang v.*

SEWAK v. LAMBAB PANDE (1902)

[I. L. R., 25 All., 27

3.—Death of respondent—Civil Procedure Code, ss. 368, 532—Death of respondents pending appeal—Abatement of appeal.—Six persons held a decree, in execution of which an application was made to attach certain property as the property of the judgment-debtors. Objections were made under s. 278 of the Code of Civil Procedure, and were allowed. Thereupon four out of the six decree-holders filed a suit for a declaration as to the owner-

ABATEMENT OF SUIT—concluded.**2. APPEALS—concluded.**

The plaintiffs appealed to the High Court, but pending the hearing the two decree-holders who had been made defendants-respondents died, and no representatives of these respondents were placed upon the record. Held that the appeal did not abate. *Chandrasang v. Khimabhai* (1907), I. L. R., 22 Bom., 718, referred to. *Kamapat v. Baldeo* (1900), I. L. R., 22 All., 222, distinguished. *ALLA RAKSHI v. MADHO RAM* (1903) . I. L. R., 23 All., 22

4. ——— Practice—Procedure—Abatement—Civil Procedure Code (Act XIV of 1892), ss. 363, 532—Death of some of the respondents—Legal representatives not brought on the record—Abatement of appeal as against them—Appeal continuing against the remaining respondents.—The plaintiff filed an appeal in a District Court. It was admitted, and then adjourned sine die. At the hearing, which took place nearly two years afterwards, it appeared that two of the respondents had died in the meanwhile, and their legal representa-

ADIRANG PANADIRANG (1901)

[I. L. R., 26 Bom., 203

ABDUCTION.

See KIDNAPPING.

ABETMENT.

See BIGAMY . 6 C. W. N., 343

See CONSPIRACY.

[I. L. R., 28 Cal., 797

See SANCTION FOR PROSECUTION—NATURE, FORM AND SUFFICIENCY OF SANCTION.

[I. L. R., 30 Cal., 605

See UNLAWFUL ASSEMBLY.

[5 C. W. N., 250

1—Penal Code (Act XLV of 1860), s. 211—False information to police—False charge, prosecution for—Facts amounting to offence—Abetment, knowing that charge is false—Advice with knowledge—Prejudice—In the course of a quarrel between Ramlogan and Bandhan, Topai, who was sitting near, took Ramlogan's part and struck Bandhan, whereupon Bandhan fled. Ramlogan then

quently both Ramlogan and Topai were convicted

logan was present at the time when the theft was alleged to have been committed, the story, if false,

ABETMENT—concluded.

was false to Ramlogan's knowledge. That, having made Topai lodge an information which he knew to be false, Ramlogan was guilty of abetting an offence under s. 211, Indian Penal Code. *Held* also that, although the conviction was for the substantive offence, as the sentence was sustainable under ss. 211/109, and there was also no ground for supposing that the accused had been prejudiced by the conviction under s. 211, it was not necessary to alter the conviction. The making a false charge before the police falls within the first portion of s. 211, Indian Penal Code. *Queen-Empress v. Karim Bulah* (1897), *I. L. R.*, 14 Cal., 633, followed. *RAM LOGAN LAL v. EMPEROR* (1903) 7 C. W. N., 556

2.—*Conspiracy—Penal Code (Act XLV of 1860), s. 103—Per BHASHYAM ATTANOB, J.*—Under the Indian Penal Code, conspiracy, except in cases provided for by ss. 311, 400, 401, 402 and 121A of the Code, is a mere species of abetment where an act or an illegal omission takes place in pursuance of that conspiracy, and amounts to a distinct offence for each distinct offence abetted by conspiracy. *KING-EMPEROR v. TRIMAL RADDI* (1901) *I. L. R.*, 24 Mad., 533

3.—*Penal Code (Act XLV of 1860), s. 493—“Enticing away” a woman—Charge of abetment against the woman enticed—Validity—Where a*

ABKARI LAWS

See EXCISE LAWS.

ABSCONDING OFFENDER.

—*Defence—Right of private defence—Public servant—Unlawful assembly—Public servant acting in good faith under colour of his office—Institution of proceedings—Criminal Procedure Code (Act V of 1898), ss 87, 88 and 190—Penal Code (Act XLV of 1860), ss 99, 143 and 182—A Magistrate issued a proclamation under s 87 of the*

were the accused, assembled, and, by assuming a threatening attitude, prevented the police officer from

order of attachment might not have been properly

ABSCONDING OFFENDER—concluded.**ABWABS.**

See CESS.

[6 C. W. N., 360
I. L. R., 28 Cal., 17

ACCIDENT, LOSS BY.

See RAILWAY COMPANY.

[*I. L. R.*, 28 All., 867
I. L. R., 27 Bom., 126, 597

ACCOMPLICE.

See APPROVER . 7 C. W. N., 457

See CHARGE TO JURY—MISDIRECTION.

[*I. L. R.*, 26 Mad., 1

not require the same amount of corroboration as that of the person who is an actual participator with the principal offender. In dealing with the question what amount of corroboration is required in the case of testimony given by an accomplice, the Courts

2—*Evidence—Bribery—Evidence Act (I of 1872), ss 113, 114 (b), and 133—*

maxim does or does not apply to a particular case.

ACCOMPLICE—concluded.

it must be remembered that all persons coming

[I. L. R., 28 Bom., 193

Queen v. Elah Bax, B. L. R., Sup. Vol (P.B.),
459, referred to KING-EMPEROR v. MOHIDDIN
SABIR (1901) . . . I. L. R., 25 Mad., 143

ACCOUNT.

See EXECUTOR . . . 7 C. W. N., 476

See PARTNERSHIP—RIGHTS AND LIABILI-
TIES OF PARTNERS

[I. L. R., 28 Calc., 53

See PRACTICE—CIVIL CASES—PARTIES.

[I. L. R., 30 Calc., 609

—liability to—

See MORTGAGE—POSSESSION UNDER
MORTGAGE . . . I. L. R., 25 All., 387

—right to an—

See EXECUTOR . . . I. L. R., 27 Bom., 281

See TRANSFER OF PROPERTY ACT, s 93.

[I. L. R., 30 Calc., 463

ACCOUNT STATED.

See LIMITATION ACT, 1877—

s. 19—ACKNOWLEDGMENT OF DEBTS;
SCH. II, ART 64

ACCOUNT, SUIT FOR.

See LIMITATION ACT, 1877, SCH. II, ART.
89 . . . I. L. R., 24 All., 27

See PARTITION—JURISDICTION OF CIVIL
COURTS IN SUITS RESPECTING PARTI-
TION . . . I. L. R., 28 Calc., 769

See PRACTICE—CIVIL CASES—STAY OF
PROCEEDINGS . . . I. L. R., 30 Calc., 627

ACCOUNT BOOKS, ENTRIES IN.

See PROMISSORY NOTES—ASSIGNMENT OF,
AND SUITS ON, PROMISSORY NOTES.

[I. L. R., 29 Calc., 334

ACCOUNT SALES.

See EVIDENCE—CIVIL CASES—ACCOUNT
SALES.

ACCOUNTS.

See COMMISSIONER FOR TAKING ACCOUNTS.
[5 C. W. N., 682

See INTEREST—MISCELLANEOUS CASES—
ACCOUNTS.

See MORTGAGE—ACCOUNTS.

See RECEIVER . . . 5 C. W. N., 233

—adjustment of, in execution—

See CIVIL PROCEDURE CODE, s 501.
[5 C. W. N., 710

—by guardian—

See GUARDIANS AND WARDS ACT (VIII OF
1860), ss. 34, 41 . . . 5 C. W. N., 207

ACCRETION.

See MALIKANA . . . 7 C. W. N., 846

—assessment of, to revenue—

See EVIDENCE—CIVIL CASES—MAPS
[I. L. R., 30 Calc., 291

—suit for alluvial land—

See LIMITATION ACT, 1877.
[I. L. R., 29 Calc., 518

ACCUSED PERSON.

See COMPENSATION—CRIMINAL CASES—
TO ACCUSED, ON DISMISSAL OF
COMPLAINT.

See DETENTION OF ACCUSED BY POLICE.

See DISCHARGE OF ACCUSED.

See EVIDENCE—CRIMINAL CASES—EX-
AMINATION OF ACCUSED.

See EXAMINATION OF ACCUSED PERSON.

See REVISION—CRIMINAL CASES—DIS-
CHARGE OF ACCUSED.

—effect of compounding on co-accused—

See COMPOUNDING OFFENCE.
[7 C. W. N., 176

—error in charge—

See ERROR . . . I. L. R., 29 Calc., 481

**—necessity for notice to, before, passing
order to prejudice of—**

See REVISION—CRIMINAL CASES—MIS-
CELLANEOUS CASES.
[I. L. R., 28 Mad., 41

ACCUSED PERSON—concluded.**—notice to—**

See SANCTION FOR PROSECUTION—NOTICE OF SANCTION I. L. R., 26 Mad., 592

—wrong description of—

See WARRANT OF ARREST—CRIMINAL CASES. I. L. R., 28 Cal., 399

—Code of Criminal Procedure (Act V of 1893), ss. 203, 213, 215 and 526—Commitment in the absence of accused, whether legal—Witness, examination of, in the absence of accused, if proper—Cross-examination of prosecution witnesses—Postponement, application for, refusal of—Transfer—Credible information of order of stay of proceedings by High Court, procedure on receipt of—Bias—Cancellation of bail and remand to custody, unapplication for time to move for transfer.—It is illegal to make a commitment in the absence of the accused.

accused under s. 420, cl. (b), for stay of proceedings pending an application to the High Court for transfer, immediately cancelled their bail and committed them to custody. IN THE MATTER OF SURJYA NARAIN SINGH (1900) . . . 5 C. W. N., 110

ACCUSED PERSON, RIGHT OF.

See WITNESS—CRIMINAL CASES—

EXAMINATION OF WITNESSES—CROSS EXAMINATION;

[I. L. R., 28 Cal., 594

SUMMONING WITNESSES.

[7 C. W. N., 188

ACKNOWLEDGMENT.**—of debt—**

See DOCUMENT—ALTERATION OF.

[I. L. R., 25 Bom., 616

See LIMITATION ACT, 1877—

ss. 5 AND 19;

[I. L. R., 26 Bom., 782

s. 19—ACKNOWLEDGMENT OF DEBTS; SCH. II, ART. 64.

[I. L. R., 23 All., 503

26 Mad., 186

ACKNOWLEDGMENT—concluded.**—of debt—concluded.**

See PARTNERSHIP—DISSOLUTION OF PARTNERSHIP. I. L. R., 26 Bom., 42

See STAMP ACT—

(I OF 1879), SCH. I, ART. 1;

[I. L. R., 30 Cal., 697

(II OF 1899), SCH. I, ART. 1;

[I. L. R., 23 All., 218

(II OF 1899), SCH. I, ARTS. 1 AND 5 . I. L. R., 25 Bom., 873

—of liability—

See PLAINT—AMENDMENT OF PLAINT.

[I. L. R., 30 Cal., 699

—of title—

See LIMITATION ACT, 1877, s. 19—ACKNOWLEDGMENT OF OTHER RIGHTS.

[I. L. R., 26 Mad., 34

ACQUIESCENCE.

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.

[I. L. R., 28 Cal., 303

See ESTOPPEL—ESTOPPEL BY CONDUCT.

See LANDLORD AND TENANT—

NATURE OF TENANCY;

[I. L. R., 28 Cal., 738

BUILDINGS ON LAND, ETC.; RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS.

[5 C. W. N., 846

See MORTGAGE—CONSTRUCTION—USE-FRUCTUARY MORTGAGE.

[L. R., 29 I. A., 148

—Landlord and tenant—Kabuliyat by one of several joint tenants—Rent-suit against recognised tenant alone—Bengal Tenancy Act (VII of 1885), s. 65—Where one of several joint tenants executed a kabuliyat in favour of the landlord, and the other tenants acquiesced in the representation of the holding by the tenant who executed the kabuliyat, and

[7 C. W. N., 170

ACQUISITION OF LAND.

See LAND ACQUISITION ACT.

ACQUITTAI.

See APPEAL IN CRIMINAL CASES—ACQUITTAIS, APPEALS FROM

See COMPOUNDING OFFENCE.

[7 C. W. N., 176

See CONFESSION—CONFESSION SUBSEQUENTLY RETRACTED.

[8 C. W. N., 380

ACQUITTAL—concluded.

See CRIMINAL PROCEDURE CODE, s. 403.
[I. L. R., 24 Mad., 641]

See DISCHARGE OF ACCUSED.

See REFERENCE TO HIGH COURT—CRIMINAL CASES . . . 7 C. W. N., 135
[I. L. R., 24 All., 346
" 25 All., 128]

See REVISION—CRIMINAL CASES—ACQUITTALS

ACT.

See BENGAL ACT.

See BOMBAY ACT.

See MADRAS ACT.

See N.-W. PROVINCES AND OUDH ACT.

See STATUTES.

—application of, to Crown—

See MADRAS CITY MUNICIPAL ACT, s. 341.
[I. L. R., 25 Mad., 457]

—construction of—

See STATUTES, CONSTRUCTION OF.

—1841—XIX, ss. 3, 5, 8—

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 24 Mad., 364]

—1845—I—

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.
[I. L. R., 30 Calc., 794]

—1846—XI, s. 3, rules under—

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL.
[I. L. R., 25 Bom., 667]

—1847—IX, ss. 5 to 8—

See EVIDENCE—CIVIL CASES—MAPS.
[I. L. R., 30 Calc., 291]

—1855—XXVIII—

See INTEREST ACT (XXVIII of 1855).

—s. 2—

See INTEREST—MISCELLANEOUS CASES—COMPOUND INTEREST.
[7 C. W. N., 876]

—1856—XV, ss. 2, 5—

See HINDU LAW—DISQUALIFICATIONS—RE-MARRIAGE
[I. L. R., 23 Bom., 388]

—1858—XXXI—

See MALIKANA . . . 7 C. W. N., 846

—XXXV—

See LUNATIC.

[I. L. R., 30 Calc., 873
24 Mad., 504]

ACT—continued.**—1858—XXXV—concluded.**

Sec. 9, 10 and 11 discussed and explained.
MUKUND KOER v. DEPUTY COMMISSIONER OF CHOTA NAGPUR (1902)
[I. L. R., 29 Calc., 638]

—1859—X—

See BENGAL REST ACT.

—XI—

See SALE FOR ARREARS OF REVENUE.

—ss. 3, 5, 6—

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.
[7 C. W. N., 377]

—ss. 5, 6, 7—

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.
[I. L. R., 30 Calc., 1]

—s. 6—

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.
[6 C. W. N., 528]

—s. 8—

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.
[I. L. R., 30 Calc., 794]

—s. 33—

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.
[6 C. W. N., 528
I. L. R., 30 Calc., 1]

PARTIES.

[7 C. W. N., 377]

—s. 37, cl. fourth—

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI of 1859.
[I. L. R., 30 Calc., 498]

—s. 54—

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF . . . I. L. R., 29 Calc., 223

—1859—XIII, ss. 1, 2—

—Failure to comply with order of Court—Criminal Procedure Code (Act V of 1898), s. 4 (c)—“Offence”—The offence created by the Workman’s Breach of Contract Act (XIII of 1889) is not the neglect or refusal of the workman to perform his contract but the failure to comply with

—1860—XLV—

See PENAL CODE.

ACT—continued.

—1860—XLVIII—

See POLICE ACT, 1860.

—1861—V—

See POLICE ACT, 1861.

—1863—XX (Religious Endowments).

See ARBITRATION—ARBITRATION UNDER SPECIAL ACT. I. L. R., 26 Mad., 361

1.—s. 5—Vacancy in office of Manager—Appointment by Civil Court—Civil Procedure Code (Act XIV of 1852), s. 622—Jurisdiction of High Court to entertain petition to revise order appointing Manager.—An order made by a Civil Court under the powers conferred by s. 5 of the Religious Endowments Act (XX of 1863) is a judicial

by a Civil Court, there must be a vacancy in the office, there must have been a transfer to the former trustee, and a dispute must have arisen respecting the right of succession to the office. The words in s. 5, "any dispute shall arise respecting the right of succession," apply to a case in which a question has arisen with reference to the person who is to succeed in the office, and the jurisdiction of the Civil Court under the section is not confined to cases in which a dispute has arisen respecting the right to succeed to the office. *GOPALA ATTAR v. ARUNACHALLAM CHETTI* (1902). I. L. R., 26 Mad., 85

2.—s. 14—Suit for declaration—Maintainability when ancillary to claim for dismissal of manager—Ground of dismissal—Bona fide claim by manager to property of the institution.—In a suit brought under the Religious Endowments Act (XX of 1863), a declaration that property belongs to an institution, and that a mortgage over it is not binding on the institution, may be asked for and made when it is ancillary to a claim for the removal of the manager. The plaintiffs in a suit under the Religious Endowments Act based their claim for the removal of a defendant from his office of manager of a mosque on the ground that he had set up a right of private property in the mosque

ACT—continued.

—1863—XX (Religious Endowments)—continued.

3.—s. 18—Leave to sue—Leave to sue in High Court in case of neglect by trustee—Trustee of public charity—Acquisition by prescription of trusteeship with power to appoint successors.—The trusteeship of certain public temples was handed down from M to his son, and then to his grandson, after which the younger brother of the grandson succeeded to the office. He, by will, appointed his sister and her husband as trustees to succeed him, and authorised them to appoint their own successors, thus diverting the devolution of the office from the family of the original trustee. The sister and husband assumed office, but the husband died soon after. The sister continued to hold the office of trustee for over twenty-four years. She, by will, appointed as her successor her sister's son, who held office for twenty years, and, by will, appointed his son-in-law, the defendant, as his successor. Defendant was a grant of the office and assumed the

contained a provision for the appointment of a successor; and she had, acting under that provision, appointed a successor, giving him a similar power to appoint his own successor. *Sembla* that the title so acquired by the sister and her successor was not a hereditary trusteeship passing necessarily to their

neglect of duty on the part of a temple trustee. Such a suit is therefore maintainable without leave being obtained under s. 18 of that Act. *Sembla* that when a person is appointed to the office

[I. L. R., 24 Mad., 219]

4.—Leave to sue granted on application made by unverified letter, and not presented to Court by applicant or pleader—Validity—Civil Procedure Code (Act XIV of 1882), ss. 622, 637—Maintainability of civil revision petition against order granting leave passed with material irregularity.—Applications to District

—s. 18—

See FAUPER SUIT.

[I. L. R., 24 Mad., 419]

ACT—continued.

—1863—XX (Religious Endowments)—
concluded.

Courts under s. 111 of the Religious Endowments Act (XX of 1863) for leave to sue should be duly verified, and presented either by the applicant in person or by his pleader. A grant of such leave on an unverified application not presented in Court is a material irregularity within the meaning of s. 622 of the Code of Civil Procedure, and a civil revision petition lies from the order granting it. Omission to give notice of such an application to the person whom it is intended to sue does not of itself

Venkatap-
1895),
SIYAN v.

" d., 685

5. —Leave to institute suit—
Necessity for showing exercise of control by Board of Revenue.—For a Court to have jurisdiction to grant sanction, under s. 18 of the Religious Endowments Act (XX of 1863), to institute a suit, it is not necessary for it to be shown that the Board of Revenue has actually exercised control over the temple in question. *Muthu v. Gangathara*, I. L. R., 17 Mad., 95, explained. *SATURLURI SEETARAMANJA CHARYULU v. NANDURI SEETAPATI* (1902)

[I. L. R., 26 Mad., 168]

—1864—II—

See TRANSFER OF CIVIL CASE—LETTERS
PATENT, HIGH COURTS, CL. 13.

[I. L. R., 27 Bom., 575]

—III—

See WHIPPING.

[I. L. R., 25 Bom., 712]

—1865—X—

See SUCCESSION.

—1869—I—

See OUDH ESTATES ACT.

—IV—

See DIVORCE ACT.

—1870—VII—

See COURT FEES ACT.

—X—

See LAND ACQUISITION ACT, 1870.

—1871—I—

See CATTLE TRESPASS ACT.

—XXIII—

See PENSIONS ACT.

—1872—I—

See EVIDENCE ACT.

—IV—

See PUNJAB LAWS ACT.

—IX—

See CONTRACT ACT.

ACT—continued.

—1873—X—

See OATHS ACT.

—1875—XVIII—

See LAW REPORTS ACT.

—1876—XI—

See PRESIDENCY BANKS ACT.

—XVII—

See OUDH LAND-REVENUE ACT.

—1877—I—

See SPECIFIC RELIEF ACT.

—III—

See REGISTRATION ACT.

—XV—

See LIMITATION ACT, 1877.

—1878—I—

See OPIUM ACT.

—III—

See N.-W. PROVINCES LOCAL RATES ACT.

—XI—

See ARMS ACT.

—XII—

See PUNJAB LAWS ACT.

—1879—I—

See STAMP ACT, 1879.

—XVII—

See DEKKHAN AGRICULTURISTS' RELIEF
ACT.

—XVII, ss. 3, 15A—

See MORTGAGE—CONSTRUCTION.

[I. L. R., 26 Bom., 252]

—XVIII—

See LEGAL PRACTITIONERS' ACT.

—XXI—

See FOREIGN JURISDICTION ACT.

—1881—V—

See PROBATE AND ADMINISTRATION ACT.

—XII—

See N.-W. PROVINCES RENT ACT.

—XIV—

See OUDH COURTS ACT.

—XXVI—

See NEGOTIABLE INSTRUMENTS ACT.

—1883—IV—

See TRANSFER OF PROPERTY ACT.

—VI—

See COMPANIES ACT.

ACT—continued.

—1882—VI, es. 189, 214—

See APPEAL—ACTS—COMPANIES ACT.
[I. L. R., 30 Calc., 758]

—XIV—

See CIVIL PROCEDURE CODE.

—s. 2 “decree”—

See REMAND—CASES OF APPEAL AFTER
REMAND. I. L. R., 26 Mad., 518

—XV—

See SMALL CASE COURT, PRESIDENCY
TOWNS.

—1883—XIX—

See LAND IMPROVEMENT LOANS ACT.

—1885—VIII—

See BENGAL TENANCY ACT.

—XVIII—

See LAND ACQUISITION ACTS, 1885 AND
1894.

—1886—II—

See INCOME-TAX ACT.

—1887—XII—

See BENGAL, NORTH-WESTERN PROVIN-
CES AND ARSAM CIVIL COURTS ACT.

—1888—VI—

See INVENTIONS AND DESIGNS ACT.

—1889—VII—

See SUCCESSION CERTIFICATE ACT.

—IX—

See NORTH-WESTERN PROVINCES AND
ODDH KANUNGOS AND PATWARIS ACT.

—1890—VIII—

See GUARDIANS AND WARDS ACT.

—IX—

See RAILWAYS ACT.

—XI—

See PREVENTION OF CRUELTY TO ANIMALS
ACT.

—1891—XIV—

See ODDH COURTS ACT, 1891.

—1892—VII—

See MADRAS CITY CIVIL COURT ACT.

—1893—IV—

See PARTITION—MISCELLANEOUS CASES.

ACT—concluded.

—1894—I—

See LAND ACQUISITION ACT, 1894.

—1895—III, s. 5—

See WHIPPING.

[I. L. R., 25 Bom., 712]

—XII—

See COMPANY—MEETINGS AND VOTING.
[I. L. R., 27 Bom., 118]

—1897—III—

See EPIDEMIC DISEASES ACT.

—VIII—

See REFORMATORY SCHOOLS ACT.

—IX—

See PROVIDENT FUNDS ACT.

—1898—V—

See CRIMINAL PROCEDURE CODE.

—1899—II—

See STAMP ACT, 1899.

—VI—

See CONTRACT (AMENDMENT) ACT, 1899.

—VIII—

See PETROLEUM ACT.

—IX—

See ARBITRATION ACT, 1899.

ACT OF STATE.

See HINDU LAW—CUSTOM—IMPARTI-
LITY. I. L. R., 29 Calc., 828

See SECRETARY OF STATE.

[I. L. R., 24 Bom., 189]

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See ADMIRALTY OR VICE-ADMIRALTY
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[I. L. R., 29 Calc., 402]

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See ACT OF STATE.

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See WITNESS—CIVIL CASES—SUMMON-
ING AND ATTENDANCE OF WITNESSES.

[I. L. R., 28 Calc., 37]

24 Mad., 200

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[O C. W. N., 717
I. L. R., 29 Calc., 211]

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INATION OF WITNESSES—GENERALLY.

[O C. W. N., 714]

—of sale—

See SALE IN EXECUTION OF DECREE—
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ADMINISTRATION.

See CERTIFICATE OF ADMINISTRATION.

See LETTERS OF ADMINISTRATION.

—suit for—

See HINDU LAW—REVERSIONERS—AD-
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[I. L. R., 29 Calc., 260]

See LETTERS PATENT, HIGH COURTS, 1865,
CL. 12 . I. L. R., 29 Calc., 315

—under Act XIX of 1841—

See SUPERINTENDENCE OF HIGH COURT—
CIVIL PROCEDURE CODE, s. 622.

[I. L. R., 24 Mad., 364]

**1.—Adoption—Practice—Pleadings—Admin-
istration, suit for—Will, construction of—
Administration, prayer for, without asking for
declaration with regard to an alleged adoption—
Amendment—Adoption, preliminary trial of
the question of.—**Suit for administration and
construction of a will, under which plaintiff's interest
was restricted in case a son was adopted to the
testator. Plaintiff, *inter alia*, stated that plain-
tiff was informed that in *Jaisi* 1297 the widow
of the testator purported to take in adoption a
son, whose natural father was at the time and
is now a Brahmo and had renounced the Hindu
religion. She submitted that such adoption was
absolutely invalid and did not operate to pass any
title to the adopted son. There was, however, no
prayer asking for any declaration with regard
thereto. Held that, upon the suit as at present
constituted, the question of adoption was not in
issue and was not a part of the suit and was not to be

adoption, and should contain a prayer for a declara-
tion as to the fact or validity thereof. The whole
substance in the claim for administration being
dependent on the adoption being out of the way.

ADMINISTRATION—concluded.

**2.—Contested legacies—Administration suits
—Practice.**—With regard to particular legacies
which may be contested, the usual course, in adminis-
tration suits, is to deal with them when the case comes
up for further directions on the report after the usual
inquiries have been made as directed by the adminis-
tration decree. *FANINDRA KUMAR MITTAR v. ADM-
INISTRATOR-GENERAL OF BENGAL* (1901)

[O C. W. N., 321]

**3.—Probate or Administration—Will—
Hindu will—Necessity of probate or letters of
administration—Indian Succession Act (X of 1865),
ss. 181 and 187.—**Notwithstanding the terms of s.
181 of the Indian Succession Act (X of 1865), a
will of a Hindu

ADMINISTRATOR.

See LETTERS OF ADMINISTRATION.

son and heir of Anna De Silva, brought this suit,
claiming to recover his share of the said property,
alleging that it belonged absolutely to his mother.
The second defendant (the purchaser from Graham
Anna De Silva,
her husband
for whom she
that, in any
event, he had a good title as against the plaintiff

ADMINISTRATOR—concluded.

having purchased from the administrator of Anna De Silva's estate. *Held* that, assuming that the property did belong to Anna De Silva, the second defendant had acquired an indefeasible title to it by virtue of the conveyance to him to which her administrator was a party. Her interest in it had vested in her administrator under s. 179 of the Succession Act (X of 1865), and under s. 263 he could dispose of it as he might think fit. *Held also* that, even if Anna De Silva held the property as trustee, the second defendant was entitled. The legal estate passed to her administrator, and he conveyed to the second defendant, who also obtained the equitable estate when he received the title-deeds from Graham & Co. as assignees of the first defendant, who was one of the heirs of Anna De Silva and who asserted his own title to the whole property to the exclusion of the plaintiff. The second defendant's title was therefore complete unless he could have detected the falsehood of the first defendant's claim by reasonable diligence, and there was nothing to show that he could. *De SILVA v. De SILVA* (1902) . . . I. L. R., 27 Bom., 103

ADMINISTRATOR GENERAL.

—Administrator General of Bengal—Sanction to prosecute—Administrator to estate of deceased person—Public servant, offences by—Criminal Procedure Code (Act V of 1895), s. 187—Calcutta Municipal Act (Bengal III of 1899), ss. 320, 574. —The Administrator General of Bengal, who was appointed by the High Court administrator to the estate of a deceased person, was served with a notice

ment. *Held* that the sanction of Government was not necessary for the institution of the prosecution, s. 187 of the Criminal Procedure Code not being applicable to a case like the present; that the Administrator General of Bengal was in charge of the premises, in respect of which the offence charged was said to have been committed, not by virtue of his office, but by virtue of his appointment by the Court as administrator to the estate of the deceased; and that he was charged with having committed the offence in the latter capacity. *Nando Lal Basak v. N. N. Mitter* (1899), I. L. R., 26 Cal., 652, followed. CORPORATION OF CALCUTTA v. ADMINISTRATOR GENERAL OF BENGAL (1903)

[I. L. R., 30 Cal., 927;
s.c. 7 C. W. N., 750

ADMIRALTY OR VICE-ADMIRALTY JURISDICTION.

—Admiralty jurisdiction—Arrest of a steamship, application for—Damage done "by a ship"—Maritime lien for damage—Injury caused to one

ADMIRALTY OR VICE-ADMIRALTY JURISDICTION—concluded.

ship by wrongful act of another—Ship as "Instrument of mischief"—Action in rem—53 and 54 Vict., c. 27.—To establish a maritime lien for damage against a ship, the damage must be the direct result

ADMISSION.

See ESTOPPEL.

—by legal practitioner—

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See PLEADER—AUTHORITY OF, TO BIND CLIENT . . . 7 C. W. N., 351

ADOPTION.

See HINDU LAW—

ADOPTION;

WILL—CONSTRUCTION OF WILLS—ADOPTION;

VESTED AND CONTINGENT INTERESTS . I. L. R., 29 Calc., 898

See LIMITATION ACT, 1877, SCH. II—

ART. 118;

ART. 119.

See SUCCESSION CERTIFICATE ACT, ss 6, 7 AND 9 . . . I. L. R., 25 Bom., 523

—suit to set aside—

See DECLARATORY DECREE, SUIT FOR—ADOPTION . I. L. R., 30 Calc., 613

See LIMITATION ACT, 1877, s 3 AND SCH. II, ART. 118 . I. L. R., 24 Mad., 405

ADULTERATION.

—of food—

See CALCUTTA MUNICIPAL ACT (BENGAL ACT III OF 1899), s. 495.
[I. L. R., 30 Calc., 643]

ADULTERY.

See DIVORCE ACT.

1.—Charge—Complaint—Rape—Committal of accused on charge of rape—Addition by Sessions Judge of charge of adultery—Criminal Procedure Code (Act V of 1899), ss. 199, 227 and 239—Penal Code (Act XLV of 1860), ss. 376 and 397.—Before a criminal charge of adultery can be preferred, a formal complaint of that offence must be instituted in the manner provided by s. 199 of the Criminal Procedure Code. Therefore, where an accused person was committed to the Sessions to stand his trial on a charge, preferred by a husband, of rape, under s. 376 of the Penal Code, and the Sessions Judge at the trial added a charge of adultery under s. 397 and acquitted the

2.—Complaint—"Complaint," meaning of—Prosecution for adultery or enticing away a married woman—Criminal Procedure Code (Act V of 1899), ss. 4, cl. (h), 199.—The word "complaint,"

3.—Marriage—Penal Code (Act XLV of 1860), Ch. X, ss. 497, 498—Enticement—Marriage, de facto, if sufficient for conviction, where marriage illegal—Mahomedan law—Marriage with wife's uterine sister in wife's lifetime and within the period of iddat following the death of her first husband—Whether nika ceremony confers validity

unlawful upon both these grounds under Mahomedan law, the performance of the nika ceremony alone would not give the complainant the status of a husband in relation to the woman, and the conviction of the accused under ss. 497, 498, Indian Penal Code, was bad. DANTER SHEIKH v. TAYIB MANDAL (1902)
[7 C. W. N., 143]

ADVERSE POSSESSION.

See LANDLORD AND TENANT—NATURE OF TENANCY [I. L. R., 28 Mad., 488
" 27 Bom., 515]

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See LIMITATION ACT, 1877, s. 4.
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See LIMITATION ACT, 1877, SCH. II—ART. 134;
[I. L. R., 27 Bom., 363, 500]

ARTS 134 AND 144;
[I. L. R., 27 Bom., 373]

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See COUNSEL.

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[I. L. R., 30 Calc., 539]

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[I. L. R., 25 Mad., 184]

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[I. L. R., 24 Mad., 345]

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[I. L. R., 26 Mad., 266]

AGENT.

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[I. L. R., 29 Calc., 595]

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7 C. W. N., 825

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—acknowledgment of debt by—

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—authority of—

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[I. L. R., 29 Calc., 647]

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See CONTRACT ACT.

See KABILITAT.

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ments—

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[I. L. R., 29 Calc., 810]

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[I. L. R., 25 Mad., 585]

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—secret—

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[I. L. R., 26 Bom., 689]

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[I. L. R., 26 Mad., 19]

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[6 C. W. N., 57]

1. OMISSION TO APPEAL IN TIME AGAINST
PRELIMINARY ORDER OR DECREE.

1.—*Partition suit—Preliminary order or decree*—Whether omission to appeal against the preliminary order or decree within the period of limitation debars a party from questioning the preliminary order or decree in an appeal against the final decree—Code of Civil Procedure (Act XIV of 1852), s. 206—Held by the Full Bench (MACLEAN, C.J., and RAMPI, J., dissenting) that, in an appeal against the final decree in a partition suit, it is open to the appellant to question the correctness of the preliminary order or decree for partition when no appeal was preferred against such order within the time allowed by law. *Boloram Dey v. Ram Chandra Dey* (1895), I. L. R., 23 Cal., 279, overruled. *KHADEM HOSSAIN v. EMDAD HOSSAIN* (1901)

[I. L. R., 29 Cal., 758; s.c., 5 C. W. N., 617]

2. ACTS.

3.—*Companies Act (VI of 1882), ss. 169, 214—Notice of appeal—Appeal out of time.*—No appeal against an order made in the matter of the winding up of a Company under the Indian Companies Act of 1882 shall be heard by an Appellate Court unless notice of the same is given within three weeks after any order complained of has been made.

4.—*Court-fees Act (VII of 1870), s. 12, para. 1—Class to which a suit belongs—Decision as to such class—Insufficient stamp—Appeal.*—S

on the plaint or memorandum of appeal. In the matter of *Omrao Mirza v. Mary Jones* (1882), 12 C. L. R., 149; *Chania v. Ramdul* (1877), I. L. R., 1 All., 360; *Annamalai Chetti v. Cloets* (1891), I. L. R., 4 Mad., 201; *Kanaran v. Komuppan* (1890), I. L. R., 14 Mad., 169; *Dada Bhan Kitter v. Nagesh Ram Chandra* (1896), I. L. R., 23 Bom., 496, approved of. *STUDD v. MATT MARTO* (1901)

[I. L. R., 28 Cal., 334]

APPEAL—continued.

2. ACTS—concluded.

the Chapter in which the section occurs. *UMA CHARAN DAS v. MUKTAKISHI DAS* (1900)

[I. L. R., 28 Cal., 149;
s.c., 5 C. W. N., 443]

3. ARBITRATION.

3.—*Decree in accordance with award—Civil Procedure Code (Act XIV of 1852), ss. 662, 622—Power of arbitrators—Error in law in award—Revision.*—References to arbitration are dealt with by Ch. XXXVII of the Civil Procedure Code under three heads:—(a) where the parties to

place without the intervention of the Court, and the

Court; so that no question can arise as to the

decision. They submitted their award, in which, amongst the other matters in dispute, they decided that the suit was cognizable by the Civil Court. Objections to the award were overruled, and an application to set it aside was refused by the Subordinate Judge, who, under s. 522 of the Civil Procedure Code, duly pronounced a decree in accordance with, and not in excess of, the award. The Chief Court ad-

APPEAL—continued.

3. ARBITRATION—continued.

made, and not having been corrected or modified, and the application to set it aside having been refused, the Subordinate Judge had no option but to pro-

[L. R. 25 Mad., 684]

C.R. (GHULAM JILANI v. MUHAMMAD HUSSAN)
[8 C. W. N., 228; L. R., 29 I. A., 51]

7.—Civil Procedure Code (Act XIV of 1882).

s. 506, 522—Reference to arbitration—Petition not joined in by all the parties to the suit—Legality of reference.—In a suit for partnership accounts, two out of three defendants petitioned the Court, under s. 506 of the Code of Civil Procedure, to refer the matters in dispute to arbitration. The representatives of the third defendant (who was then deceased) were not parties to the application, which was, however, granted. An award was made,

KEDDY v. KANDADAI RAJAMANNAR ATTANGAR
(1902) . . . I. L. R., 28 Mad., 47

8.—Civil Procedure Code (Act XIV of 1882),

s. 521—Petition by both parties, requesting the District Munsif to examine site and peruse documents and agreeing to abide by his decision—

looked upon as an award. And, as no reasons had

APPEAL—continued.

3. ARBITRATION—concluded.

been shown for setting aside the award under s. 521 of the Code, the decree must be taken to have been passed in accordance with the award, and, as such, upheld. NIDHAMARTHI MUKKANTI v. THAMMANA RAMAYYA (1902) . . . I. L. R., 28 Mad., 76

4. CERTIFICATE OF ADMINISTRATION (ACT VII OF 1889).

9.—Succession Certificate Act (VII of 1889), ss. 10, 19—Order extending certificate—"Order granting a certificate"—The extension of a certificate under s. 10 of the Succession Certificate Act to additional debts is not the grant of a certificate so as to give a right of appeal under s. 19 of that Act against the extension. VENKATESWARULU v. BRAHMADEVUTU RAJA KRISHNANI (1901)

[I. L. R., 25 Mad., 684]

5. DECREES.

10.—Order dismissing objections to the execution

UDDIN (1900) . . . I. L. R., 28 Calc., 61

11.—Consent decree—Compromise—Civil Procedure Code (Act XIV of 1882), s. 373—Jurisdiction.—When a decree is passed by consent of parties, the question as to whether or not the compromise decree is valid cannot be gone into on an appeal against that decree. Ashutosh Chandra v. Tara Prasanna Roy (1884), I. L. R., 10 Calc., 612, referred to. Brojo Durlab Singh v. Rama Nath Ghose (1897), I. C. W. N., 597, distinguished. BIRAJ MOHINI DAS v. CHINTA MOHINI DAS (1901)

[5 C. W. N., 877]

6. DEFAULT IN APPEARANCE.

12.—Civil Procedure Code, ss. 556, 558, 559—Order for re-admission of appeal dismissed for default not capable of being used by the appellant as a ground of objection to the decree.—An order under s. 558 of the Code of Civil Procedure, re-admitting an appeal which had been dismissed

APPEAL—continued.

6. DEFAULT IN APPEARANCE—concluded.

13.—Civil Procedure Code, ss. 157 and

SINGH (1904) . . . I. L. R., 20 All., 102

14.—Counsel—Pleader—Dismissal of appeal for default—Appearance of appellants by pleader—

Jowd. PATINHARE TAREKAT RAMA MANNAI v. VELLUR KRISHNAN MENON (1902)

[I. L. R., 26 Mad., 267]

15.—Civil Procedure Code (Act XIV of 1932), ss. 103, 108 and 553—Application to restore—Prevented by sufficient cause from appearing—Power of Court to restore where sufficient cause not shown.—The affirmative provisions in ss. 103, 108 and 553 of the Code of Civil Procedure, that a

15 BAKRI BE GAVILISO HIS DISCRETION. NOMAYTA v. SUBRAMYA (1903) . . . I. L. R., 26 Mad., 599

7. EX PARTE CASES

16.—Civil Procedure Code (Act XIV of 1932), ss. 103, 562, 594 and 595 (a)—Ex parte decrees—Appeal from order refusing application under s. 103, Civil Procedure Code—Remand under s. 562, Civil Procedure Code, appeal from order of—S 562, Civil Procedure Code, what can be remanded

APPEAL—continued.

7. EX PARTE CASES—concluded.

under—Final order—Interlocutory order.—In an appeal from an order refusing to set aside a decree under s. 103, Civil Procedure Code, on the

KISSEY v. COLLECTOR OF JAUNTORE (1900)

[5 C. W. N., 153; s.c., I. L. R., 28 I. A., 28; I. L. R., 23 All., 220]

17.—Civil Procedure Code, ss. 89, 100, 104—Ex parte decrees—Service of summons on defendant residing out of British India—Burden of proof—Where a defendant against whom an ex parte decree has been passed appeals against that decree, it is sufficient in the first instance to establish that in the Court which passed the ex parte decree the necessary proof of service of summons on the

18.—Civil Procedure Code, ss. 80, 103—Application to set aside a decree passed ex parte—Irregular service of summons.—Where a serving officer finds a defendant to be away temporarily from home, and knows where he is, it is not a good service if he thereupon does no more than fix the summons to the outer door of the house; but he must make further efforts to effect personal service. SAKINA v. GAURI SAHAI (1902) . . . I. L. R., 24 All., 302

19.—Civil Procedure Code, ss. 538, 591—Order setting aside an ex parte decree—Order not "affecting the decision of the case."—Held that an order under s. 103 of the Code of Civil Procedure,

of the Code Chintamony Dass v. Raghoonath

APPEAL—continued.

8. EXECUTION OF DECREE.

(a) QUESTIONS IN EXECUTION.

20.—Memorandum of appeal—Code of Civil Procedure (Act XIV of 1882), ss. 2, 244.—An order determining any question referred to in s. 244, Civil Procedure Code, is a decree under s. 2, Civil Procedure Code. When, therefore, an appeal is preferred against such an order, it is sufficient to attach to the memorandum of appeal a copy of the order itself, and it is not necessary to attach to the memorandum a

[6 C. W. N., 283

[I. L. R., 26 Bom., 121

22.—Civil Procedure Code (Act XIV of 1882), ss. 244, 253.—Decree—Order—Appeal—Mortgage decree, question regarding satisfaction of, when no application for execution pending—Where a Court deals with a question relating to the discharge or satisfaction of a decree, it may be said to be a question of law.

23.—Civil Procedure Code (Act XIV of 1882), s. 244.—Order by High Court directing District Court to take account of amount due under mortgage—Order by District Court declaring amount due.—The High Court, by its decree, directed a District Court to take an account of the amount due to a decree-holder under a mortgage. The District Court accordingly took the account, and passed an order declaring, in Court, under s. 83 of the Transfer of Property Act, the

[I. L. R., 26 Mad., 237

24.—Possession—Specific Relief Act (I of 1877), s. 9.—Decree for possession—Order in execution

shall be from any order or decree passed in any suit under that section, and, by the Explanation to

APPEAL—continued.

8. EXECUTION OF DECREE—continued.

(a) QUESTIONS IN EXECUTION—continued.

25.—Sale—Decree—Sale in execution—Civil Procedure Code (Act XIV of 1882), ss. 310A and 244 (c).—Order refusing to set aside a sale—Appeal from such order—An appeal lies from an order passed under s. 310A of the Civil Procedure Code (Act XIV of 1882), refusing to set aside a sale, where the dispute relates to the execution, discharge or satisfaction of a decree and thus comes within s. 244 (c) of the Code. *MURLIDHAN v. ANANDRAO* (1900) I. L. R., 25 Bom., 418

26.—Sale in execution—Purchase by decree-holder—Application for amendment of sale certificate.—A decree-holder applying for execution of his decree asked for a 3 annas 8 pies be put sale, and at the o him in decree-holder applied for amendment of the sale certificate, which was refused him. He then appealed against the order of the Court refusing to amend. Held that no appeal lay from such order, either under

27.—Joint decree—Sale in execution—Purchase by decree-holders—Receipt for part of decretal money given by one decree-holder on behalf of both—Sale set aside—Civil Procedure Code, ss. 244, 291, 311.—Two persons holding a joint decree caused certain immovable property of their judgment-debtor to be sold, and, having obtained permission to bid, themselves became the

the decree should be entered up; he at the same

application was rejected; but the Subordinate

APPEAL—continued.

8. EXECUTION OF DECREE—continued.

(a) QUESTIONS IN EXECUTION—continued.

Judge, instead of confirming the sale, set it aside, on the ground that only one of the decree-holders auction-purchasers had put in the receipt under the second clause of a 294, and directed a re-sale, and this notwithstanding that the other decree-holder admitted that the receipt had been presented on his behalf also. On appeal to the District Judge, the order of the Subordinate Judge was set aside, and an

28.—Execution of decree—Objection by judgment-debtor that more had been delivered to the auction-purchaser than was included in his sale certificate—Objection disallowed—Civil Procedure Code, s. 243—Certain landed

fell within
re, and was
d v. Locke
I Mira Lal

Calc., 326, referred to I. L. R., 13
RAM ADHAR C. NARAIN
Das (1903) I. L. R., 24 All., 518

29.—Order—Civil Procedure Code (Act XIV of 1852), ss. 244, 287 (c)—Value specified

[I. L. R., 30 Calc., 617

30. Transfer for execution—Civil Procedure Code, ss. 232 and 295—Sale of decree, and transfer for execution

APPEAL—continued.

8 EXECUTION OF DECREE—continued.

(a) QUESTIONS IN EXECUTION—concluded.

prayer in this case is to be allowed a rateable share of the assets in Hindarsi Prasad's case, let this case be put with that case." Held (1) that the Court to which the decree was transferred for execution had no power to entertain the transferee's application for a rateable share in the assets; such application could only be entertained by the Court which

(b) PARTIES TO SUITS.

31.—Civil Procedure Code (Act XIV of 1852), s. 593—Application for restitution of property—Execution of decree of Appellate Court—Decree, whether capable of execution against, and hindari

to the decree and who has not derived any interest subsequent to such decree. Bhagwati Prasad v. Ram Dhand

32.—Civil Procedure Code (Act XIV of 1852), ss. 244, cl. (c), 278, 280, 283—Defendants exempted from decrees—Questions relating to execution, discharge or satisfaction of decree—Claim to attached property—Defendants, who are exempted from the operation of a decree, are not parties to the suit within the meaning of s. 244, cl. (c), of the Civil Procedure Code, and there is therefore no appeal from an order disallowing a claim preferred by them to properties attached in execution of the decree. RAM PERSHAD C. JAGANNATH RAM (1102)

[I. L. R., 30 Calc., 134; s.c., 8 C. W. N., 10

33.—Death of decree-holder—Representative brought on record at a late stage—The decree-holder died after the

APPEAL—continued.

8. EXECUTION OF DECREE—concluded.

(b) PARTIES TO SUITS—concluded.

also, that it was not incumbent on the appellant to apply for execution to the Court which passed the decree. He had adopted the proper procedure in applying to the High Court to be brought on the record; and, an order having been passed, bringing him on the record, he was competent to present the appeal. *RAGHUNATHA THATHA CHARIAR v. VENKATESA TAWAR* (1902)

[I. L. R., 26 Mad., 101]

9. NORTH-WESTERN PROVINCES ACTS.

34.—Act XIX of 1873 (North-Western Provinces Land-revenue Act), s. 114—*Partition—Order refusing to stay partition—Jurisdiction of High Court—Held* that, under s. 114 of the North-Western Provinces Land-revenue Act, the High Court can only entertain appeals from orders and decisions whereby the rights of parties are declared. No power is given to the High Court to restrain the Collector or Assistant Collector from entertaining an application for perfect partition. *MUNAWAR ALI v. SHAKIBATUN-NISSA BIBI* (1902) . . . I. L. R., 25 All., 141

35.—Act XII of 1881 (North-Western Provinces Rent Act), s. 189—*Suit for rent—Appeal admissible where the question has been whether any rent at all was payable by the defendant—Held* that the words in s. 189 of the North-Western Provinces Rent Act, 1881,

and has been determined. *Deo Charan Danga v. Beni Pathak* (1899), I. L. R., 21 All., 247, referred to. *BENI PRASAD KUARI v. BATULAN BIBI* (1901) . . . I. L. R., 23 All., 283

36.—Act XII of 1857 (Bengal Civil Courts Act), s. 10—*Jurisdiction—Powers of Subordinate Judge in charge of the office of Subordinate Judge—Various Court appeal—*

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, 455

10 ORDERS.

37.—Order admitting review.—The admis-

38.—Order amending decree.—Order amending a decree not in conformity with the judgment—Appeal from such an order—Decree—Review of judgment—Civil Procedure Code (Act XIV of

APPEAL—continued.

10. ORDERS—continued.

1882), ss. 206, 538, 622, 634.—There is no appeal from an order, under s. 206 of the Code of Civil

NALINAKSHYA GHOSAL v. MAYAKSHAR HOSSAIN (1900)
[I. L. R., 28 Cal., 177]

39.—Order awarding compensation—Civil Procedure Code (Act XIV of 1882), ss. 491, 538—*Attachment before judgment*—There is no appeal from an order awarding compensation under s. 491 of the Code of Civil Procedure. *NARASINGA BRAKSHI v. GOTANDA BHAKSHI* (1900)

[I. L. R., 24 Mad., 62]

40.—Order declaring suit to have abated—Civil Procedure Code, ss. 368, 538 (18)—*Held*

41.—Order in insolvency—Civil Procedure Code, ss. 2, 351, 539—*Order in insolvency made by Subordinate Judge*—An appeal against an order in insolvency, passed under s. 351 of the

either the value of the decree or the amount of the order in insolvency was obtained or the

42.—Order in Small Cause suit—Subordi-

43.—Order refusing application to be declared insolvent—Civil Procedure Code (Act

APPEAL—continued.

10. ORDERS—continued.

XIV of 1882), ss. 343, 345, 588 (17) and 589—*Application to be declared an insolvent—Subject-matter of the suit over Rs. 5,000 in value—First Class Subordinate Judge—Rejection of the application—Appeal—District Court.*—In a suit, the subject-

lay to the District Court under ss. 588, cl. (17), and 589 of the Civil Procedure Code (Act XIV of 1882) *Venkatrayar v. Jamboo Ayyan* (1892), I L. R. 17 Mad. 377, not followed. *MANEKSHAH SOBARJI, GANDHI v. DADABHAI JAMSHETJI* (1903)
[I. L. R., 27 Bom., 604]

44.—Order rejecting a plaint—*Civil Procedure Code*, ss. 562, 558—Where the first Court rejected the plaint on the ground of misjoinder of causes of action and of defendants, and the lower Court set aside the order—*Held*—*588 Civil Procedure Code. RAM PRASAD v. SACHJI DASJI* (1902) 6 C. W. N., 585

s. 11.—s. 60 (b) of the Code of Civil Procedure refers, not only to orders passed by a Court of first instance, but to similar orders which an Appellate Court may pass by virtue of s. 582 of the Code. Where an order returning a plaint for amendment, or to be presented to the proper Court, is passed by a Court of Appeal, an appeal will lie from such order, in the manner provided by s. 589 of the Code.

46.—Order of remand—*Bengal Tenancy Act (VIII of 1885)*, s. 109 A—*Appeal from an order of remand passed by a Special Judge—Civil Procedure Code (Act XIV of 1882)*, s. 589—An appeal does not lie from an order of remand passed by a Special Judge under the Bengal Tenancy Act

APPEAL—continued.

10. ORDERS—continued

MOTHRU CHANDRA MAJUMDAR v. TARA SUNKAR GHOSH (1903) 7 C. W. N., 440.

47.—Order under Mad. Act VIII of 1865 (Rent Recovery), ss. 10, 69—*Adjudication that plaintiff has failed to prove default by defendant—"Judgment."*—An order passed under

VENKATA PAPAIA RAO v. VENKATA SUBBAYYA (1901) I. L. R., 25 Mad., 453.

48.—Order under Mad. Reg. III of 1802,

49.—Order under s. 244, Civil Procedure Code—*Civil Procedure Code (Act XIV of 1882)*, s. 232—Order refusing to recognise transferee of decree—*Appeal*—An order passed under s. 232 of the Civil Procedure Code, refusing to recognise the transferee of a decree, may, for purposes of appeal, be regarded as an order passed under s. 244, and is therefore appealable. *Firasami Rowth v. Bodi Naikan* (Appeal against Appellate Order No 60 of 1899—unreported), followed *SUBBUTHAYAMMAL v. CHIDAMBARAN ASARI* (1901)

[I. L. R., 25 Mad., 383]

50.—Purchase of mortgaged property by mortgagee—Application by purchaser to recover possession as against defendants who held possession under prior sale based on prior mortgage—Question raised whether purchaser could recover possession without first paying defendants amount of prior mortgage—"Execution and enforcement of decree"—*Appeal*—A mortgagee obtained a decree directing the sale of property in the possession of certain defendants, subject

these defendants, and an appeal lay from an order passed thereon. *Per MOORE, J.*—Even if the purchaser had not been also the decree-holder, he would have been a representative of a judgment-creditor. *Per BHASHYAN ATYANGAR, J.*—The order was not the less an order under s. 244 because it was also.

APPEAL—concluded.**12. OBJECTIONS BY RESPONDENT—concl'd.**

58.—Withdrawal of appeal—Civil Procedure Code, ss. 373, 561—Right of appellant to withdraw his appeal at any time before judgment.—Where no objections under s. 561 of the Code of Civil Procedure have been filed by the respondent, an appellant has an absolute right to withdraw his appeal at any time before judgment.

[I. L. R., 23 All., 130

59.—Stamp duty—Court-fees Act (VII of 1870), ss. 4, 16—Stamp duty on memorandum of objections—When payable.—Stamp duty on a memorandum of objections filed by a respondent, in an appeal under s. 561 of the Code of Civil Procedure, need not, under s. 16 of the Court-fees Act, be paid till the time of hearing. REFERENCE UNDER COURT-FEES ACT, 1870, s. 5 (1901)

[I. L. R., 25 Mad., 24

APPEAL IN CRIMINAL CASES.

1. ACQUITTALS, APPEALS FROM	Col. 48
2. CRIMINAL PROCEDURE CODE	49
3. PRACTICE AND PROCEDURE	51

See FIRST OFFENDERS

[I. L. R., 24 All., 306

See HABEAS CORPUS, WRIT OF.

[I. L. R., 29 Calc., 286

See JUDGMENT—CRIMINAL CASES.

[7 C. W. N., 30

See MAGISTRATE—RE-TRIAL OF CASES.

[I. L. R., 29 Calc., 412

See PRACTICE—CRIMINAL CASES—RULE TO SHOW CAUSE

7 C. W. N., 80

See RECOGNIZANCE TO KEEP PEACE—CANCELLING ORDER.

[I. L. R., 30 Calc., 101

See SANCTION FOR PROSECUTION—REVOCA-TION OF SANCTION.

[I. L. R., 30 Calc., 394

See SESSIONS JUDGE, JURISDICTION OF—ORDER FOR RE-TRIAL OF APPEAL.

[7 C. W. N., 301

See UNLAWFUL ASSEMBLY.

[5 C. W. N., 31

—power to set aside conviction of accused not appealing—

See REVISION—CRIMINAL CASES.

[5 C. W. N., 33

APPEAL IN CRIMINAL CASES—continued.**1. ACQUITTALS, APPEALS FROM.**

1.—Misdirection—Criminal Procedure Code (Act V of 1898), ss. 423 (2), 537—Trial by jury—Verdict and order of acquittal—Appeal against acquittal—Jurisdiction of High Court to consider the evidence—Evidence of accomplices.—In a charge, against an Inspector of Salt and Abkari,

and in his presence, and in the presence of two other persons who were in the employment of the witness.

but they were challenged by the accused as false

appeal being preferred by the Public Prosecutor

the High Court, in such circumstances, to order

14 Bom.
5 Suth.
Khan v.
and Ali
Khan v. Queen-Empress, I. L. R., 25 Calc., 230,
commented on. EMPEROR v. SMITH (1902)
[I. L. R., 26 Mad., 1

APPEAL IN CRIMINAL CASES— continued.

1. ACQUITTALS, APPEALS FROM—concluded.

2.—Reversal of order—Criminal Procedure Code (Act V of 1898), s. 423—Power to "reverse the finding and sentence"—Reversal by Deputy Magistrate of an order acquitting accused on a charge of theft—Futility—A Deputy Magistrate has no power, under s. 423 of the Code of Criminal Procedure, to reverse an order acquitting an accused person of a charge of theft. The words "reverse the finding and sentence," in cl. 1 (b) of that section, mean reverse the finding upon which a conviction is based, and do not empower the Appellate tribunal (or, at any rate, an Appellate tribunal other than the High Court) to reverse or set aside an acquittal. *Queen-Empress v. Jahansilla*, I L. R., 23 Cal., 975, explained. *SAMI ATTA v. EMPEROR* (1902)

[I. L. R., 26 Mad., 478]

■ CRIMINAL PROCEDURE CODE

3.—Alteration of finding—Act V of 1898, ss. 195, 199 and 423—Powers of Appellate Court—Alteration of finding—Question whether accused is prejudiced by alteration—Act XLV of 1860, ss. 182 and 500—Held that an Appellate Court, when it acts under s. 423 (1) (b) of the

Code of Criminal Procedure on a finding of fact, is not bound by the finding of the Magistrate, and may alter the finding, as would be binding on a Court of first instance.

4.—Enhancement—Act XLV of 1860 (Indian Penal Code), s. 70—Act V of 1898, s. 423—Alteration of sentence in appeal—

APPEAL IN CRIMINAL CASES— continued.

2. CRIMINAL PROCEDURE CODE—continued.

Empress v. Chagan Jagannath (1898), I. L. R., 23 Bom., 439, dissented from. *KING-EMPEROR v. SAGWA* (1901) I. L. R., 23 All., 497

5.—Act V of 1898, s. 423 (b)—Conviction of two accused, and order against both accused to pay Court and process fees in equal shares—Acquittal of one accused on appeal—Order by Appellate Court for entire Court and process fees—Legality—"Enhancement of sentence."—A

process fees. Held that the order of the Appellate Court was legal under s. 423 (d) of the Criminal Procedure Code.

6.—Restoration of property—Immovable property—Possession, order by Subordinate Magistrate restoring—Appeal—Jurisdiction—Magistrate of first class specially empowered to hear appeals—Consequential or incidental order—Act V of 1898, s. 423, cl. (d), and 522, and Act X of 1862, s. 423—Held that a Magistrate of the

7.—Restoration of property order for—Act V of 1898, ss. 517, 520.—An order by a Magistrate directing the restoration of property in respect of which no offence has been found to have been committed, to the person in

8.—Right of way—Act V of 1898, s. 423—Right of way, interference with—Order for

APPEAL IN CRIMINAL CASES— continued.

2. CRIMINAL PROCEDURE CODE—concluded.

preserving status quo ante on conviction, if proper—
Appellate Court, power of, to set aside such order
—Penal Code (Act XXI of 1860), s. 331—
When a person blocked up a
mainant had a
convicted of
ider s. 341 of
the Penal Code and an order was made by the try.

APPEAL IN CRIMINAL CASES— concluded.

3. PRACTICE AND PROCEDURE—concluded.

assessors tried in fact by a jury—Trial by jury—
Appeal on a matter of fact.—Under s. 418 of the
Criminal Procedure Code (V of 1898), no appeal
lies on matters of fact, where an accused person is

appeal lay in this case on matters of law only, and not
on matters of fact. *Per JENKINS, C.J.*—The words
in s. 418 of the Criminal Procedure Code, 1898,
"where the trial was by jury" mean "where the
trial in fact was by jury" and not "when the trial
should have been by jury." *KING-EMERSON v.*
PARBUTSHANKAR (S.B. 1901)

(L. L. R., 25 Bom., 680)

12.—Dismissal of appeal—Act V of 1893,
s. 221—Summary dismissal of appeal of accused,

9.—Whipping—Act V of 1893, s. 331, 407
—Sentence of whipping by second-class Magistrate
—Appeal—Application for postponement of
sentence till hearing of appeal—Refusal—Vali-
dity—When a second-class Magistrate passes a sen-
tence of whipping only, without imprisonment, he has
no power to postpone the execution of the sentence
pending an appeal by the accused. It is only when
appealable
to be post-
edure Code.

(S. B. 111, 112 Mad., 465)

3 PRACTICE AND PROCEDURE.

rioting. That was the only charge before the
Magistrate. On appeal the Sessions Judge said that

13.—Question of law raised for the first
time in appeal—Practice—Objection to prose-
cution, on a question of law raised for the first
time in appeal, given effect to.—Objection to the

(L. L. R., 25 Bom., 680)

APPEAL TO PRIVY COUNCIL.

1. CASES IN WHICH APPEAL LIES OR NOT—

(a) APPEALABLE ORDERS	53
(b) SUBSTANTIAL QUESTIONS OF LAW	"
(c) CONCURRENT JUDGMENTS ON FACTS	55
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2. PRACTICE AND PROCEDURE—

(a) LEAVE TO APPEAL	57
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3. STAY OF EXECUTION PENDING APPEAL

11.—Assessors and Jury—Act V of 1893,
ss. 269 and 418—Offence triable with the aid of

Col.

53

55

57

53

59

APPEAL TO PRIVY COUNCIL—

continued

See COSTS—SPECIAL CASES—APPEAL.
[I. L. R., 27 Bom., 124]

See PRIVY COUNCIL, PRACTICE OF.

—cases in which an appeal lies or not
—appealable orders—

See APPEAL—EX PARTE CASES
[5 C. W. N., 153]

—criminal cases—

See BAIL. . . I. L. R., 24 Mad., 161

1. CASES IN WHICH APPEAL LIES OR NOT.

(a) APPEALABLE ORDERS.

1.—Order under s. 206, Civil Procedure Code—*Leave to appeal to Privy Council—Letters Patent, 1865, cl. 39—“Order made on appeal”—Amendment of decree, application for—Civil Procedure Code (Act XIV of 1852), ss. 206, 595 and 596—An order passed by the High Court, rejecting an application under s. 206 of the Civil Procedure Code to amend a certain decree of the Court, is not an order “made on appeal,” and is therefore not appealable to His Majesty in Council. Soudamones Dosses v. Maharaj Dieraj Mahatab Chand Bahadoor (1866), 6 W. R. (Misc. R.), 102, and Raja Enasi Hossein v. Rente Roushun Jahan (1868), 10 W. R. (F. R.), 1, referred to. SUNDAR KOER v. CHANDRISHWAR PRASAD SINGH (1903). . . I. L. R., 30 Calc., 679*

2.—Order under s. 562, Civil Procedure Code—Civil Procedure Code, s. 595—*Appeal to His Majesty in Council—Appeal from an order under s. 562 of . . . —Held that an order of being the Council there*

NIRSA (1903). . . I. L. R., 25 All., 625

(b) SUBSTANTIAL QUESTIONS OF LAW.

3.—Affirmance of decision of lower Court—Civil Procedure Code (Act XIV of 1852), s. 596—*Decree of Appellate Court that*

like the word “judgment,” be given as in many cases, and statement of the grounds on which the Court proceeds to make the decree. In order to “affirm the decision of the Court below,” within the meaning of that section, it is sufficient for the Appellate Court to affirm

APPEAL TO PRIVY COUNCIL—

continued.

1. CASES IN WHICH APPEAL LIES OR NOT
—continued

(b) SUBSTANTIAL QUESTIONS OF LAW—continued.

the decree; it need not also affirm the grounds of fact on which the judgment was passed. Where the decree of the Appellate Court was that “the appeal be dismissed,” but the reasons given were not the

s.c., L. R., 30 I. A., 35;
7 C. W. N., 177

presence of such a question does not give a right of appeal when the value is below the mark; the Code restricts the right of appeal when the higher Court affirms the decision of the lower and the dispute either directly or indirectly relates to an amount of Rs. 10,000. Under ss. 595 and 600, Civil Procedure Code, there is a right of appeal if the High Court certifies that the case is “otherwise” a fit one for appeal. The word “otherwise” refers to special cases, such as, where the point in dispute is not measurable by money, though it may be of great public or private importance. But in all such cases a special certificate to that effect must be granted by the High Court. The mere assent of the respondent to an appeal does not give the appellant a right of

s.c., L. R., 28 I. A., 11;
I. L. R., 23 All., 227

5.—Concurrent judgments on facts—Civil Procedure Code, s. 596—*Application for leave to appeal to Her Majesty in Council—The expression “involve some substantial question of law,” as used in s. 596 of the Code of Civil Procedure, must be construed with reference to the practice of the Privy Council not to interfere with concurrent findings of fact of the Courts below; and*

those concurrent findings of fact . . .

APPEAL TO PRIVY COUNCIL— continued.

1. CASES IN WHICH APPEAL LIES OR NOT —continued.

(b) SUBSTANTIAL QUESTIONS OF LAW—continued.

question of law" which the appeal to the Privy Council "involves." *Moran v. Mitta Bibee* (1876), *I. L. R.*, 2 Calc., 228; *Gopi Kati Birbar v. Goluck Chunder Bose* (1894), *I. L. R.*, 16 Calc., 292, note, and *In re Vishwambhar Pandit* (1895), *I. L. R.*, 20 Bom., 699, referred to. *BANKER LAL v. JAGAT NARAIN* (1900) . *I. L. R.*, 23 All., 84

6. —Civil Procedure Code (Act XIV of 1892), s. 596—Concurrent decisions on facts—Leave granted where no substantial question of law was involved. —Where, on an appeal to the Privy Council, there were two concurrent decisions of the Courts below, on facts sufficient to dispose of the suit, but the High Court had granted leave to appeal, stating that "there seems to be a point of law

APPEAL TO PRIVY COUNCIL— continued.

1. CASES IN WHICH APPEAL LIES OR NOT —continued.

(b) SUBSTANTIAL QUESTIONS OF LAW—concluded.

8.—Registrar's report—Civil Procedure Code (Act XIV of 1892), s. 595—Privy Council, leave to appeal to—Order refusing to vary or discharge report of Registrar—Belchambers' Rules and Orders, rule 617—Substantial question of law.—Where a Court, under rules 615 and 617 of Belchambers' Rules and Orders (2nd Ed.), merely refused to re open a Registrar's report: Held that such decision is a final decree within the meaning of s. 595, Civil Procedure Code, and that it does not impose any pecuniary liability on applicant. *ROYAL INSURANCE CO. v. AKHOR COOMAR DUTT* (1901) . . . 6 C. W. N., 41

(c) CONCURRENT JUDGMENTS ON FACTS.

9.—Concurrent findings—Appeal to His Majesty in Council—Leave to appeal—Concurrent findings of fact—Civil Procedure Code (Act XIV of 1892), s. 596—Where there are concurrent findings of the lower Court and of the High Court upon questions of fact, and no question of law arises, a certificate giving leave to appeal to His Majesty in Council should not be granted. *SARALBOTTI MANDARAIN v. BABULAL MENDAR* (1901)

[5 C. W. N., 455]

High Court and of the lower Court upon questions of fact, and when upon such findings no question of law arises *Tulsi Persad Bhakt v. Benayek Misser* (1896), *I. L. R.*, 23 Calc., 918; *I. L. R.*, 23 I. A., 102, followed. *SARALBOTTI MANDARAIN v. BABULAL MENDAR* (1901)

[*I. L. R.*, 28 Calc., 190]

(d) VALUATION OF APPEAL.

11.—Civil Procedure Code, s. 596—Appeal to His Majesty in Council—Decree involving indirectly some question respecting property of the value of ten thousand rupees or upwards.—When, as in s. 596 of the Code of Civil Procedure, it is laid down that, in order that an appeal may lie to His Majesty in Council, the decree to be appealed from must involve, directly or indirectly, some claim or question to or respecting property of ten thousand rupees in value or upwards, the reference is to suits in existence. It is not enough that the question decided by such decree is a question of title which may possibly affect the title of persons, who are not parties to the decree, to property not the subject-matter of the suit in which the decree was passed, and concerning the title to which property there is no litigation pending. *Radha Krishna Das v. Rai Krishna Chand* (1901),

7. Malicious prosecution—Practice—Civil Procedure Code (Act XIV of 1892), s. 600—Certificate that appeal to the Privy Council involves a question of law.—In an action for malicious prosecution, in which the plaintiff claimed Rs. 100,000 as damages, the Court of first instance dismissed the suit, holding that the

under a misapprehension. The only question involved was a question of fact on which there were concurrent findings. According to English Law, it is for the Judge and not for the jury to determine what is reasonable and probable cause in an action for malicious prosecution. The jury finds the facts. The Judge draws the proper inference from the

APPEAL TO PRIVY COUNCIL

—continued.

1. CASES IN WHICH APPEAL LIES OR NOT

—concluded.

(d) VALUATION OF APPEAL—concluded.

I. L. R., 23 *All.*, 415, *Banarsi Prasad v. Kashi Krishna Narain* (1901), *I. L. R.*, 23 *All.*, 227; *Moofti, Mohammad Uddoola v. Baboo Motichand* (1937), 1 *Moo I. A.*, 363, and *Baboo Gopal Lal Thakoor v. Teluk Chander Rai* (1860), 7 *Moo. I. A.*, 548, referred to. *HANUMAN PRASAD v. BHAGWATI PRASAD* (1902)

[*I. L. R.*, 24 *All.*, 236

2. PRACTICE AND PROCEDURE.

(a) LEAVE TO APPEAL.

12.—Certificate—Civil Procedure Code (*Act XIV of 1882*), ss 595, 596 and 600—Certificate where case is "otherwise" fit for appeal.—In considering under what section of the Civil Procedure Code the certificate of fitness was given by the Court, it is the certificate itself which has to be looked at, and not the order for the certificate. In granting a certificate under s 600, Civil Procedure Code, the Court must exercise its judicial discretion upon the matter. Unless the certificate upon which the leave to appeal is based is in such a form as to justify that leave, the Court must find that leave was not properly given, and the appeal must be dismissed. *Banarsi Prasad v. Kashi Krishna Narain* (1900), 5 *C. W. N.*, 193, referred to. *BADRA KRISHN DAS v. BAI KRISHN CHAND* (1901) 5 *C. W. N.*, 689

[*s.c.*, *I. L. R.*, 23 *All.*, 415;
I. L. R., 28 *I. A.*, 182.

13.—Separate Suits—Valuation of appeal in three similar but unconsolidated suits—Where an application for leave to appeal to the Privy Council

14.—Test—Application for leave to appeal—

the Memorandum of Association was dismissed by

APPEAL TO PRIVY COUNCIL

—continued.

2. PRACTICE AND PROCEDURE—concluded.

(a) LEAVE TO APPEAL—concluded.

meaning of cl. (b) of s. 595 Held further that,

TRADING CORPORATION, LD. v. DORABJI CHETANJI SHROFF (1903) *I. L. R.*, 27 *Bom.*, 415

(b) MISCELLANEOUS CASES.

16.—Certificate of appeal.—A certificate of appeal given pursuant to ss 595 (c) and 600 of the

17.—Limitation—Practice—Order refusing to admit an appeal—*Act XV of 1877 (Limitation)*, s 5—"Sufficient cause."—On January 19, 1897, the

within the meaning of s. 5 of the Limitation Act (XV of 1877). Held that this order could not be set aside unless shown to be wrong, however serious the consequences may have been. *RAM NARAIN JOSHI v. PARNESWAR NARAIN MATHA* (1902)

[*I. L. R.*, 30 *I. A.*, 20;
s.c., *I. L. R.*, 30 *Cal.*, 309

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3. STAY OF EXECUTION PENDING APPEAL.

18.—*Civil Procedure Code (Act XIV of 1892)*.
 §§ 603, 609.—An application for stay of execution

[5 C. W. N., 602]

APPEARANCE.

—default in—

See **APPEAL—DEFAULT IN APPEARANCE.**See **CIVIL PROCEDURE CODE**, s. 99

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—death of—

See **ABATEMENT OF SUIT—APPEALS.**

[I. L. R., 26 Bom., 597]

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[I. L. R., 24 All., 532]

See **CIVIL PROCEDURE CODE**, s. 544

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—errors affecting or not merits of case—

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—power of, to make decree in respect of parties not appealing—

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[I. L. R., 27 Bom., 284]

—power of, to make order requiring security to keep the peace—

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1. GENERAL DUTY OF APPELLATE COURT.

1.—*Order of Appellate Court returning plaint for presentation to proper Court—Act VII of 1897 (Suits Valuation)*, s. 11.—Where an Appellate Court makes an order returning a plaint for presentation to the proper Court, the Court of first

the suit on the merits. **WANID-ULLAH v KANHWAYA**
LAL (F.B. 1903) . I. L. R., 25 All., 174

2. EXERCISE OF POWERS.

Civil Procedure Code, to allow an amendment of the plaint. Where the object of an amendment of a

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APPELLATE COURT—continued.**3. EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.**

3.—Additional evidence—Civil Procedure Code, ss. 554, 568—Appar—Admission of additional evidence—Discretion of Court.—The refusal by an Appellate Court to exercise the discretion vested in it by s. 563 of the Code of Civil Procedure with respect to the admission of additional evidence would be an error or defect in procedure, within the meaning of s. 584 of the Code, because s. 563 distinctly implies that discretion must be exercised. But a refusal, in the exercise of discretion, to admit additional evidence is undoubtedly not such an error or defect. **RAM PIARI v. KALU** (19.0) **I. L. R., 23 All., 121**

4.—Evidence of application before Criminal Court—Limitation Act (XV of 1877), s. 26—Right of way—Application before a Criminal Court, admissibility in evidence of—Civil Procedure Code (Act XIV of 1892), s. 568—Additional evidence—In a suit for declaration of

Criminal Court, complaining of the obstruction in question; and the first Appellate Court relied on the petition, although it was not produced before the first Court and was not marked as an exhibit by the Code the late 1871, 31

4. ERRORS AFFECTING OR NOT MERITS OF CASE.

5.—Misjoinder—Misjoinder of parties—Misjoinder of causes of action—Assault by two persons, on the same occasion, on two other persons—Joint plaintiffs—Joint defendants—Held that, although the defendants had not really been prejudiced by the misjoinder, it was impossible to hold that the case fell within s. 578 of the Civil

APPELLATE COURT—continued.**5. INTERFERENCE WITH, AND POWER TO VARY, ORDERS OF LOWER COURT—concluded.**

XIV of 1892), ss. 53, 532—Court-fees Act (VII of 1870).—In the generality of cases, an Appellate Court cannot pass a decree for a larger amount than that claimed in the memorandum of appeal, unless,

7. ————Decree—Memorandum of appeal, valuation of—Land Acquisition Act (I of 1894), suit under—Court-fees Act (VII of 1870), ss. 8, 11.—In cases under the Land Acquisition Act (I of 1894), the decree awarded in appeal must be limited to the amount for which court-fees has been paid on the memorandum of appeal. **MAHOMED ALI AHMAD KHAN v. SECRETARY OF STATE FOR INDIA** (1903) **I. L. R., 30 Calc., 501**

8.—Grounds arising after decree—Power of Court of Appeal to vary decree on grounds arising subsequently to decree.—It is open to the Court to vary a decree on grounds arising subsequently to decree.

ASPANDYARJI SETHNA v. SETH PURSHOTAMDAS CHATURDAS (1901) **I. L. R., 25 Bom., 606**

6. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL.**SPECIAL CASES.**

9.—Evidence—Judgment not inter partes—Objection to its admissibility not taken in the first Court—Whether such an objection is allowable at a later stage of the case.—Where no objection was taken in the Court of first instance as to the admissibility in evidence of a document, but on the contrary reference was made to it by the defendant in the written statement as affording a

KUMARI CHOWDHURANI (1900)

[I. L. R., 28 Calc., 142]

10.—Limitation.—The lower Appellate Court was empowered of limitation of defence in

CHOWDHURANI (1900) **[I. L. R., 28 Calc., 88; s.c., 5 C. W. N., 180]**

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5 INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT.

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APPELLATE COURT—concluded.**6. OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—concluded.****SPECIAL CASES—concluded.**

Rent Recovery Act (Madras Act VIII of 1865) had not been served upon him, he should not be allowed to raise it on appeal. *SUBBIE v. RAMASAMI CHETTI* (1902) . . . I. L. R., 28 Mad., 363

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See MINOR—REPRESENTATION OF MINOR IN SUITS. I. L. R., 30 Calc., 1031

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See LAND ACQUISITION ACT (I of 1894), ss. 11, 18, 31 AND 33 7 C. W. N., 538.

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[I. L. R., 30 Calc., 755.

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—Landlord and tenant—Basis of apportionment of rent—Assets.—An apportionment of rent should not be on the basis of the assets of the different villages at the time of the creation of the original tenure, but on the basis of the present assets of the different portions of the tenure which by division have passed into different hands. *HARI KISHEN BHAGAT v. TILURDHARI LAL* (1903) . . . 7 C. W. N., 463.

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acquitted a person who had been convicted by the lower Court of dacoity on the evidence of an approver who had been in police-custody up till the time of trial, and where other evidence corroborating the same was found to be too weak to support a conviction *AMIR KHAN v. KING-EMPEROR* (1902) 7 C. W. N., 457

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1. ARBITRATION UNDER SPECIAL ACT.

1.—Religious Endowment Act (XX of 1863), s. 16—Suit for the removal of trustee—Reference of entire suit to arbitrator—Legality.—Under s. 16 of the Religious Endowments Act, a Court may refer any matter in difference in the suit for decision by an arbitrator, but it is not open to the Court to refer the whole suit. *KAREDLA VIJAYABAGHATA PERUMALATTA NAIDU v. VENAYARAPU SITARAMATTA* (1902) *I. L. R.*, 26 Mad., 861

2. REFERENCE OR SUBMISSION TO ARBITRATION.

2.—Agreement to refer—Civil Procedure Code (Act XIV of 1882), ss. 375, 482, 525—Agreement to refer to arbitration during pendency of suit—No order of reference made by Court—Power to give effect to agreement in the suit.—During the pendency of a suit for partition between

reference was not, however, asked for, or made by

sion related to the rights of minors, who were

was to take away from the Court the power of adjudicating upon the rights of the minors, and to leave such adjudication to a private tribunal. Such an agreement fell within s. 462 of the Code of

APPELLATE COURT—concluded.**6 OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—concluded.****SPECIAL CASES—concluded.**

Rent Recovery Act (Madras Act VIII of 1845) had not been served upon him, he should not be allowed to raise it on appeal. *SUBBIAH v. RAMASAMI CHETTY* (1902) . . . I. L. R., 28 Mad., 363

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—of mortgage debt—

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING

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[I. L. R., 28 Mad., 540.

—Landlord and tenant—Basis of apportionment of rent—Assets.—An apportionment of rent should not be on the basis of the assets of the different villages at the time of the creation of the original tenure, but on the basis of the present assets of the different portions of the tenure which by division have passed into different hands *HARI KISHEN BHAGAT v. TILVEDRAM LAL* (1903) . . . 7 C. W. N., 453.

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—Evidence of.—The evidence of an accused person who has confessed, and has been admitted or is likely to be admitted as an approver and who has been detained in police-custody up till the time of trial, is open to the greatest suspicion that the police have arranged his statements so as to fit in with any evidence that they may have obtained elsewhere. *Case in which the High Court.*

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acquitted a person who had been convicted by the lower Court of dacoity on the evidence of an approver who had been in police-custody up till the time of trial, and where other evidence corroborating the same was found to be too weak to support a conviction. *AMIR KHAN v. KING-EMPEROR* (1902) 7 C. W. N., 457

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See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE. [I. L. R., 30 Calc., 218
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1. ARBITRATION UNDER SPECIAL ACT.

1.—*Religious Endowment Act (XX of 1863),*

PERUMALAYTA NAIDU v. VEMAVARAPU SITABAMAYTA (1902) I. L. R., 26 Mad., 361

2 REFERENCE OR SUBMISSION TO ARBITRATION.

2.—*Agreement to refer—Civil Procedure Code (Act XIV of 1882), ss. 375, 482, 625—Agreement to refer to arbitration during pendency of suit—No order of reference made by Court—Power to give effect to agreement in the suit.*

reference was not, however, asked for, or made by

was to take away from the Court the power of adjudicating upon the rights of the minor, and to

ARBITRATION—continued.**2. REFERENCE OR SUBMISSION TO ARBITRATION—continued**

the Code of Civil Procedure, and obtained under similar circumstances, would be invalid—*Quare*. **LAKSHMANA CHETTI v. CHINNATHAMBAL CHETTI** (1900) **I. L. R., 24 Mad., 328**

3. ——— *Civil Procedure Code (Act XIV of 1892), s. 375, Ch. XXXVII, ss. 506 and 523—Agreement to refer to arbitration—“Adjustment of suit” within the meaning of s. 375—Agreement not in writing—Agreement to refer pending suit—Upon the petition of a party to an agreement to refer to arbitration matter in*

completion and filing of the decree” This order is of the nature of an order under Ch XXXVII of the Civil Procedure Code, but, where such agreement to refer to arbitration is not in writing, neither s. 506 nor s. 523 of the Code of Civil Procedure applies. Further, s. 523 does not apply to an agreement to refer where there is a pending suit. *Ghulam Khan v. Muhammad Hassan* (1901), **6 C. W. N., 225**, referred to *Hari Lal Das Kallindas v. Uttam Chand Manick Chand* (1879), **I. L. R., 4 Bom., 1**, dissented from *Per Maclean, C.J.*

whether an agreement to refer to arbitration would under no circumstances be an adjustment of a suit such as is contemplated by s. 375, Civil Procedure Code **FAHIA CHAND DRY v. TINCOWRI DRY** (1902) **7 C. W. N., 180**

4.—*Appeal—Award—Appeal from decree based on an award—Civil Procedure Code, s. 506—“All the parties to the suit”—Held that the words “all the parties to a suit,” in s. 506 of the Code of Civil Procedure, refer to the succeeding words of the same section “any matter in difference between them in the suit,” and would not necessarily include parties who never put in any appearance in the Court, and between whom and any of the*

[**I. L. R., 24 All., 229**

5.—*Application—Award—Acquiescence—How far a defendant, not a party to an application for reference to arbitration, is bound by his conduct.—In a suit brought by the plaintiffs for recovery of possession of certain immovable property on a declaration of title thereto, a reference was made to arbitration. One of the defendants (defendant No. 2) did not join in the reference, and did not take*

ARBITRATION—continued.**2. REFERENCE OR SUBMISSION TO ARBITRATION—concluded.**

any part in the proceedings before the arbitrators, although it appeared that he, in obedience to a

award. *Held* that it was so, and that the conduct of defendant No. 2 was not such that it could be said that he was bound by the award by reason of acquiescence **BENI MADHUS MITTER v. PREONATH MANDAL** (1900)

[**I. L. R., 28 Calc., 303; s.c., 5 C. W. N., 268**

6. ——— *Civil Procedure Code (Act XIV of 1892), s. 506—Reference to arbitration—Application by pleader not specially authorised—Where a pleader, who made the application for*

Satgjit Pertap Bahadur Sahi v. Dulhin Golab Koer (1897), **I. L. R., 24 Calc., 469**, distinguished. **SHEO DAS MISSEER v. BIMS NANDAN PERSHAD** (1902) **7 C. W. N., 343**

7.—*Reference by manager of joint Hindu family—Hindu law—Joint Hindu family—Power of manager to refer a dispute to arbitration—Award—Minors bound by the award—A manager of a joint Hindu family, even when he is not the father, has the power to bind the family by a reference of a dispute, with any outsider, regarding any family property, to arbitration, provided such reference be for the benefit of the family. Minors in the family are bound by the reference, and consequently by the award made upon it. **BALAJI NARAYAN GOKHALE v. NANA BIN BABAJI GHATGE** (1903) **I. L. R., 27 Bom., 287***

3. DUTIES AND POWERS OF ARBITRATORS.

8.—*Action after award—Award—Arbitrator, powers of—Entry by arbitrator after award made—Devolution of property, alteration of, by arbitrator—Where a plaintiff seeks to enforce an*

award, and that Art. 91, Sch. II, of the Limitation Act does not apply. An entry made by an arbitrator in the schedule of the property, after he had made his award, to the effect that a particular portion had been given to the defendant as dower and was her separate property, is no part of his award, and confers no title on the defendant. An arbitrator has no power to alter the devolution of property in a mode at variance with the ordinary principles of the law governing the parties, in the absence of a special custom prevailing in the family. He has no power to make property which is divisible

ARBITRATION—continued.

3. DUTIES AND POWERS OF ARBITRATORS
—concluded.

by law indivisible for ever. *JAFRI BEGUM v. SYED ALI REZA* (1901). 5 C. W. N., 585

[a.c., I. L. R., 23 All., 383;
I. R., 28 I. A., 111]

8.—Irregularity—Irregularity not misconduct—Right of arbitrator to delegate his ministerial duties—Invalid portion of award rejected if separable.—Where a reference to arbitration included primarily certain specific points, as to

other them and the it the f the matters were intended to be dealt with; held that the omission to bring this information to the knowledge of the

party the performance of acts of a ministerial character, so long as he exercises his own judgment on

4. REVOCATION OF, OR WITHDRAWAL FROM, ARBITRATION.

either s. 510 or s. 514, an order superseding the reference to arbitration. *JAMNA KUNWAR v. NARIN ALI* (1902). I. L. R., 24 All., 312

ARBITRATION—continued

5. AWARDS.

(a) CONSTRUCTION AND EFFECT OF.

11.—Reference to arbitration by the parties—

which a finding is
Held in
Procedur
PROTAP

(b) ENFORCING AWARDS.

12.—Specific enforcement—Specific performance—Suit on an award not a suit for specific performance of a contract—Limitation—Act XI of 1877 (Indian Limitation Act), Sch. II,

13. ——— Suit for specific enforcement of award—Case in which compensation in money considered impossible to assess.—The defen-

award having been performed, the lessee sued for specific performance of the remainder. He filed with his plaint a number of decrees obtained by him against the tenants, together with a sale-deed conveying those decrees to the defendant, and prayed that the

ARBITRATION—continued.

5. AWARDS—continued.

(b) ENFORCING AWARDS—concluded.

defendant might be ordered to accept the conveyance and pay the amounts of the decrees. *Held* that, even if the award were bad, the defendant, having acted on it and accepted the benefits it gave him, had precluded himself from impeaching it; also that the case was not one in which it was possible to assess compensation in money for the breach of the particular condition in the award, and that the plaintiff was entitled to specific performance of the award, and this was directed in terms of the order made in the case of *Bell v. Denver* (1856), 51 *Law Times Reports*, 729. *Bhai Mohan Lal v. Shiam Singh* (1901)

[I. L. R., 24 All., 164]

(c) VALIDITY OF AWARDS, AND GROUND FOR SETTING THEM ASIDE.

14.—Award beyond the terms of reference—*Ultra vires award*.—An award that goes beyond the terms of reference to the arbitrators is to that extent *ultra vires*. *MOHAMMED MUNTAAZ ALI KHAN v. SAKHAWAT ALI KHAN* (1901) 5 C. W. N., 891; [s.c., I. L. R., 23 All., 394; I. R., 28 I. A., 190]

[I. L. R., 25 Bom., 10]

criminal proceedings at Indore were then withdrawn. On the 21st June, 1898, the first and second defendants filed a suit against the first three plaintiffs, in the Court at Indore to recover from them the sum of Rs. 1000.

ARBITRATION—continued.

5. AWARDS—continued.

(c) VALIDITY OF AWARDS, AND GROUND FOR SETTING THEM ASIDE—continued.

question whether the award was rendered invalid by

plaintiffs was not shown that they were reasonable

and that, in a suit of this nature, there

[I. L. R., 25 Bom., 10]

not sign the award, although it purported to have

17. — Arbitrator, am-mukhtar of one of the parties—Indebtedness of arbitrator to a party—Judicial misconduct—*Civil Procedure Code* (Act XIV of 1892), s. 525—If, after a reference to arbitration, it transpires that the arbitrator has been acting as am-mukhtar of one of the parties, without any remuneration, the other party is entitled to withdraw from the reference, and the award made by the arbitrator after receipt of notice of revocation cannot be enforced by suit. If the arbitrator is indebted to one of the parties at the time of the reference, or becomes so indebted after the reference, and in either case does not disclose the fact to the other party, such party would be entitled to revoke the reference upon discovery of the fact, and any award made by such arbitrator would be invalid on the ground of judicial misconduct. *O. R. Coley v. A. Da Costa* (1890), I. L. R., 17 Cal., 200, *Toothimoni Dass v. Suders Dass* (1899), 3 C. W. N., 361; and *Kali Prasanna*

ARBITRATION—continued

■ AWARDS—continued.

(c) VALIDITY OF AWARDS, AND GROUNDS FOR SETTING THEM ASIDE—concluded

Ghose v. Rajani Kanto Chatterjee (1897), I. L. R. 25 Calc., 131, referred to. *MAHOMED WAHIDUDDIN v. HAKIMAN* (1902)

[I. L. R., 29 Calc., 278; s.c., 6 C. W. N., 235

18.—*Application to the Presidency Small Cause Court to set aside an award*—Small Cause Court, jurisdiction of—Civil Procedure Code (Act XII of 1892), ss. 521 and 522.—The Presidency Small Cause Court has jurisdiction to entertain an application under s. 521 of the Civil Procedure Code, and the High Court cannot interfere (under s. 522 of the Code) merely because such Court has taken, in the exercise of its jurisdiction, a mistaken view as to what does or does not constitute misconduct. Misconduct, in s. 521 of the Code, does not of necessity imply corruption. The

SARAT CHUNDER CHOWDHRY (1903)

[I. L. R., 30 Calc., 397; s.c., 7 C. W. N., 545

19.—Reference to District Munsif—

and agreeing to abide by the decision which the Court might be pleased to pass, as the final decision. The District Munsif passed an order in terms of the documents, and ultimately passed a decree in plaintiff's favour. Against that decree, defendant appealed. Held that the District Munsif had acted as an arbitrator by consent of the parties, and no appeal lay from his decision, which must be looked upon as an award. And, as no reasons had been shown for setting aside the award under s. 521 of the Code, the decree must be taken to have been passed in accordance with the award, and, as such, upheld. *NIDHAMATHI MURKANTI v. THAMMAVA RAMAYYA* (1902). I. L. R., 29 Mad., 78

(d) DELAY IN MAKING AWARD.

and the husband of defendant 4 were appointed arbitrators. The plaintiff brought the present suit against the arbitrators and defendant 5, to recover damages, alleging that only an oral award had been given and that in collusion with defendant 5 the

ARBITRATION—concluded.

5 AWARDS—concluded.

(d) DELAY IN MAKING AWARD—concluded.

arbitrators had failed to give a written award, and that, not having obtained a written award, he had suffered loss by reason of the bonds having "gone out of time" (become barred by limitation). The lower Court held that, inasmuch as the arbitrators had not shown that their delay in giving an award was caused by the negligence of the parties, the presumption was that they acted fraudulently in not doing their duty. It therefore awarded the plaintiff Rs. 1,000 damages against defendants 1 to 4. On appeal: Held (1) (reversing the decree and dismissing the suit) that, if (as stated in the plaint) an oral award had been made, there was no cause of action, as there was no stipulation that the award should be in writing; (2) that the fraud alleged, viz., of collusion with the fifth defendant, was negatived by the evidence, which showed that the arbitrators were not unanimous; (3) that the fact that the arbitrators had failed to account for the delay in making the award was not a presumption. *AVIAPPA v.*

[I. L. R., 26 Bom., 132

6. PRIVATE ARBITRATION.

of 1892, s. 2—Award including immoveable property—jurisdiction to give award and pass decree.—Matters in dispute between certain parties were submitted to arbitration within the jurisdiction of the High Court, and an award was in due course made therein. The matter to which the award related was the partition of property, including immovable property, part of which was situated outside the jurisdiction of the High Court. Application was then made that the award might be filed.

[I. L. R., 24 Mad., 31

ARBITRATION ACT, 1899.

—s. 13—

See ARBITRATION—AWARDS—CONSTRUCTION AND EFFECT OF.

[I. L. R., 29 Calc., 793

ARBITRATOR.

See ARBITRATION.

ARMS ACT (XI OF 1878).**—s. 18—**

—“*Going armed*”—*The mere carrying of arms, for purposes other than their use as such, not an offence.*—One C. N., a person entitled to possess and use fire-arms, gave a pistol to an acquaintance, who was not entitled to possess and use fire-arms, asking him to take it and get it repaired in a neighbouring town. This acquaintance gave the pistol to his father, Harpal Rai, who was taking it into the town to get it repaired, when he was arrested and charged with an offence under s. 19 of the Indian Arms Act, 1878. *Held* that Harpal Rai was, under the circumstances, guilty of no offence under the Arms Act. The mere temporary possession, without a license, of arms, for purposes other than their use as such, is not an offence within the meaning of s. 19 of the Arms Act. *Queen-Empress v Alexander William, Weekly Notes, 1891, ■ 208, Queen-Empress v ...* p. 52, ref

ARMY ACT, 1881 (44 & 45 VICT., C. 58).**—ss. 136, 151—**

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY.

[I. L. R., 25 Mad., 402

ARMY (ANNUAL) ACT, 1895 (58 VICT., C. 7).**—s. 4—**

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY.

[I. L. R., 25 Mad., 402

ARREARS OF RENT.

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.

[7 C. W. N., 203

See SALE FOR ARREARS OF RENT.

ARREARS OF REVENUE.

See SALE FOR ARREARS OF REVENUE.

ARREST.**1. CIVIL ARREST****2. CRIMINAL ARREST**

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See WARRANT OF ARREST.

—criminal arrest—

See POLICE ACT (V OF 1861), ss. 17, 19.

[I. L. R., 28 Calc., 411

See WARRANT OF ARREST—CRIMINAL CASES I. L. R., 28 Calc., 399

ARREST—concluded.**—of ship—**

See ADMIRALTY OR VICE-ADMIRALTY JURISDICTION.

[I. L. R., 29 Calc., 402

—validity or otherwise of—

See ESCAPE FROM CUSTODY.

[I. L. R., 28 Calc., 253;
6 C. W. N., 337

1. CIVIL ARREST.

—*Decree—Execution—Arrest of debtor in execution—Release of debtor from such arrest under interim protection order granted under s. 13 of Indian Insolvent Act (11 & 12 Vict., c. 21)—Re-arrest of debtor in execution of same decree—Civil Procedure Code (XIV of 1882), s. 341.*—A judgment-debtor who has been arrested and imprisoned in execution of a decree, and has obtained an interim protection order under s. 13 of the Indian Insolvent Act (11 & 12

(1902) . . . I. L. R., 29 Bom., 652

2 CRIMINAL ARREST.

—*Madras Abkari Act (Mad. Act I of 1886), s. 34—Power of officer in one Circle to arrest offenders in another.*—An officer of the Salt and

whether the officer who effected the arrest was acting

ASCETIC.**—succession to property of—**

See HINDU LAW—INHERITANCE—RELIGIOUS PERSONS 7 C. W. N., 145.

See LETTERS OF ADMINISTRATION.

[I. L. R., 28 Calc., 608.

ASSAULT.See *M. JOINDER.*[*I. L. R.*, 28 Bom., 259]— *Suit for damages for—*See *DAMAGES—SUITS FOR DAMAGES—*
TORT 6 C. W. N., 915**ASSAULT ON PUBLIC SERVANT.**See *POLICE ACT (V OF 1861)*, ss 17, 19[*I. L. R.*, 28 Calc., 411]See *THEFT—IMPRESSIONS*[*I. L. R.*, 30 Calc., 97]See *WARRANT OF ARREST—CIVIL CASES*

[5 C. W. N., 843]

— *Penal Code (Act XLV of 1860)*, ss 352, 353—
Assaulting a public officer in the discharge of his
duties—Assault on a witness—Charge for the
offence under s 353—Conviction for assaulting a
witness, when no complaint of such offence.—A
person called upon to meet a charge that he had
assaulted a public officer in the discharge of his duties

ASSESSORS.

1.—*Absence of assessor—Criminal Procedure*
Code (Act V of 1898), ss. 284, 285 and 537—
Trial with assessors—Trial with the aid of one
assessor only—Legality of such trial.—In a case
triable by a Court of Session with the aid of assessors,
one of the assessors being ill, the trial commenced
and ended with only one assessor. Held that there
was no legal trial, and that the proceedings must be
set aside and a new trial directed. S. 537 of the
Criminal Procedure Code (Act V of 1898) had no
application to such a case, as the Court was not
properly constituted. KING-EMPEROR v. JAYRAM
(1901) [*I. L. R.*, 25 Bom., 684]

2.—*Criminal Procedure Code*
(Act V of 1898), ss. 285, 537—*Commencement of*
trial, for murder, by Judge and two assessors—
Absence of one assessor during portion of the trial—
Validity of his verdict as assessor, and his opinion

was permitted to absent himself during the second
days and five half days, respectively; at first, so that
he might visit his mother on her death-bed, and
subsequently, to perform the daily obsequies rendered
necessary by her decease. He then resumed his seat
as an assessor, and continued so to act until the
termination of the trial, all the depositions recorded
in his absence having been read by him on his
return. At the conclusion of the trial the Sessions
Judge invited the opinion of each assessor, and

ASSESSORS—concluded.

recorded it. The opinion of each was that all the
accused were guilty; and the Judge, concurring in
that opinion, convicted the accused. The prisoners

3.—*Criminal Procedure Code*
(Act V of 1898), ss. 285, 285—*Assessor, trial with*
the aid of—Assessor, absence of, from trial.—The
law requires that a Sessions trial should under excep-
tional circumstances be held by the Sessions Judge
with the aid of at least one and the same assessor sitting
throughout the trial. When a trial is resumed

4.—*Jurors as assessors—Criminal Procedure*
Code (Act V of 1898), ss. 269 (3), 309—*Sessions*
Judge sitting with jury—Charges of theft and
administering drug—Opinion of only two jurors
taken as assessors on second charge—Validity.—At
the trial of an accused, before a Sessions Judge
and a jury, for theft in a building (an offence triable
by a jury), and for administering a noxious substance
(an offence triable by assessors), the Judge took the
verdict of the jury on the former charge, and took

the latter charge, and that the failure to do so
was not an "omission" or "irregularity" to which
s 537 applied. RAMAKRISHNA REDDI v. EMPEROR
(1903) [*I. L. R.*, 28 Mad., 598]

ASSETS.

See *REPRESENTATIVE OF DECEASED*
PERSON [*I. L. R.*, 28 Mad., 792]

ASSIGNMENT.

See *DEBTOR AND CREDITOR.*
[*I. L. R.*, 28 Bom., 577]
See *LANDLORD AND TENANT—PAYMENT OF*
RENT—GENERALLY.
[*I. L. R.*, 28 Mad., 540]

ASSIGNMENT—concluded.

See LIMITATION ACT, 1877, s. 7, AND
SCH. II, ART. 11.

[I. L. R., 26 Bom., 730

See PROMISSORY NOTES—ASSIGNMENT OF
AND SUITS ON, PROMISSORY NOTES

[I. L. R., 24 Mad., 654

—by debtor—

See INSOLVENT ACT—

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■ 9 AND 24.

[I. L. R., 26 Bom., 765

—of debt—

See INSOLVENT ACT, s ■

[I. L. R., 25 Mad., 406

—of decree—

See BENGAL TENANCY ACT, s 143, CL (A)

[6 C. W. N., 91

ASSIGNMENT OF CHOSE IN ACTION.

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See PROMISSORY NOTES—ASSIGNMENT OF,
AND SUITS ON, PROMISSORY NOTES

[I. L. R., 24 Mad., 654

1.—Letters Patent, Art. 15—Refusal to order
assignee of plaintiff to be brought on record—
Appeal—Civil Procedure Code (Act XIV of 1892),
s 872—Application to be brought on record in

undetermined. The case was set down for hearing
in order that a decree might be passed in terms

complied with, as A was directly interested in the
matters to be settled by the decree. COMMERCIAL
BANK OF INDIA v. SANJU SANKH (1900)

[I. L. R., 24 Mad., 252

2.—Civil Procedure Code (Act XIV of
1892), s. 244—Suit by assignee of decree for de-
claration of validity of assignment—Maintain-

**ASSIGNMENT OF CHOSE IN ACTION
—concluded.**

ability.—A suit lies, at the instance of the assignee
of a decree, for a declaration as to the validity of
his assign-
of Act -
Raman
478, ref

TAKUNTA SRINIVASA RAU (1902)

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ATTACHMENT.

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(d) EXPECTANCY "

(e) JOINT FAMILY AND REVERSIONARY
INTERESTS "

(f) MESNE PROFITS "

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2. ATTACHMENT BEFORE JUDGMENT . . "

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[I. L. R., 28 Calc., 773

—claim to attached property—

See BENGAL TENANCY ACT, s. 170.

[I. L. R., 28 Calc., 382

—irregularities in—

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[5 C. W. N., 391

—liability for wrongful attachment—

See MESNE PROFITS—ASSIGNMENT IN
EXECUTION, AND SUITS FOR MESNE
PROFITS I. L. R., 25 Calc., 540

—of property—

See POSSESSION, ORDER OF CRIMINAL
COURT AS TO ATTACHMENT OF
PROPERTY . . . 6 C. W. N., 882

1. SUBJECTS OF ATTACHMENT.**(a) ANNUITY OR PENSION.**

1.—Annuity to vendor—*Civil Procedure Code*,
s. 256—Execution of decree—Annuity payable
to vendor by vendee of immovable property.—
Held that, where a person made over property
to the Court of Wards, partly in consideration of
a present payment, and partly in consideration of
an annuity payable to the vendor, such annuity
was property of the vendor which was capable of
being attached in execution of a decree against the
vendor *Haridas Asherjia v. Baroda Kishore*
Patel (1901) 7 D. O. 217, 20 and 21.

2.—Political pension—*Civil Procedure Code*
(Act XIV of 1882), s. 256 (g)—Fund represent-
ing political pension due at date of pensioner's
death, but unpaid—Liability to attachment—A
person to whom a political pension was being paid
died; and at the date of his decease a sum of money

3.—*Civil Procedure Code*
(Act XIV of 1882), s. 256 (g)—Pensions Act
(XXIII of 1871), s. 11—Attachment of pension

ATTACHMENT—continued.**1 SUBJECTS OF ATTACHMENT—continued.****(a) ANNUITY OR PENSION—concluded.**

payable to descendants of reigning family in
Ceylon—Pensions payable in British India—
7133 of attachment—Ceylon—British India—

pensions Apparently, though this was not proved,
the cost of these pensions was ultimately defrayed by
the Government of Ceylon These pensions were
attached in execution of certain decrees Upon appli-
cation being made by the pensioners to have the

were to be regarded as merely the agent of the Ceylon
Government for the purpose of paying the pensions,
the Courts of British India would have no jurisdic-

(b) DEBTS

4.—Money payable to auctioneer—*Civil*
Procedure Code, s. 256—Execution of decree—At-
tachment of money payable to an auctioneer by

HABAD BANK (1901) . . . I. L. R., 23 All., 135

5.—Mortgage-debt—Mortgage—Mortgage-
debt, nature of—Movable or immovable property—
Mode of attaching and selling a mortgage-debt in
execution—*Civil Procedure Code* (Act XIV of
1882), ss 263, 273—Effect of sale of mortgage-debt
in execution—A mortgage-debt is movable

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1. SUBJECTS OF ATTACHMENT—continued.

(c) DECREES.

6.—Money-decree—*Civil Procedure Code (Act XIV of 1882), s. 273*—Decree for dissolution of partnership—Money decree—Execution of money-decree—Attachment of decree for dissolution of partnership.—Certain creditors of a partnership obtained a money-decree against the firm. In execution of their decree they sought to attach and sell a decree for the dissolution of the firm and for the taking of the accounts of the partners and for the incidental reliefs requisite in such decrees, including the appointment of a receiver and a direction to pay the debts of the firm. Held that the decree for dissolution could so far be regarded as a money-decree, and could therefore be attached, but not sold. The proper remedy in such cases is by proceedings under s. 273 of the Civil Procedure Code. *SIDLINGAPPA BIN IRAPPA & SRANKARAPPA BIN KARIBASAPPA (1903)*. I. L. R., 27 Bom., 556

7.—Civil Procedure Code, s. 23—A decree upon a mortgage is not a money-decree within the provisions of s. 273, Civil Procedure Code. *E. K. Macnaghten v Surja Prasad Misra (1899)*, 4 C. W. N., 222, followed. *BALI NATH LOHZA v BINOTENDRA NATH PALIT (1901)*

[8 C. W. N., 5]

(d) EXPROPRIATION.

8.—Future rents and profits of ghatwal—Decree, attachment in execution of—Ghatwal estate—Attachment of future rents and profits—Prohibitory order—Receiver.—Future rents and profits that may become due to a ghatwal cannot, as such, be attached in execution of a decree against him. *Haridas Acharya Choudhry v Daroda Kishore Acharya Choudhry (1899)*, I. L. R., 27 Cal., 39, followed. *UDAY KUMARI GHATWALIN v. HARI RAM SHANA (1901)*. I. L. R., 23 Cal., 433

(e) JOINT FAMILY AND REVERSIONARY INTERESTS.

9.—The effect of s. 30 of the Insolvent Debtors' Act and the analogous provision contained in s. 266 of the Code of Civil Procedure considered. *NUNNA BRAHMAIYA SETTI v CHAIDABABOVINA VENKATASWAMY (1902)*. I. L. R., 26 Mad., 214

(f) MESNE PROFITS.

10.—Civil Procedure Code (Act XIV of 1882), ss. 235, 273, 673—Execution—Decree for money—Attachment of a right to recover mesne profits by way of sale—Court reversal of the decree under which the property was dispossessed, and declared him to be entitled to recover possession, with mesne profits. The holder of another decree against the same judgment-debtor attached, in execution of his decree, the judgment-debtor's right to recover the mesne profits. The decree-holder then applied under s. 273 of the Code

ATTACHMENT—continued.

1. SUBJECTS OF ATTACHMENT—continued.

(f) MESNE PROFITS—continued.

of Civil Procedure to recover the mesne profits by way of execution. Held that he was not entitled to do so. The right of the judgment-debtor to recover the mesne profits by way of restitution was not a decree for money within the meaning of s. 273 of the Code of Civil Procedure. Such a right might be enforced by suit or by summary process in execution under s. 273 of the Code of Civil Procedure, but it does not apply.

is one expressly settled by the decree. *Memphis Trust, re*

NARAYANA PATTAR (1900)

[I. L. R., 24 Mad., 341]

(g) OFFERINGS TO HINDU DEITY.

11.—Civil Procedure Code (Act XIV of 1882), s. 266—"Saleable property"—Right to receive offerings to an idol—"Disposing power" over such offerings—Decree, execution of.—Offerings which may in future be made to a Hindu idol cannot be attached in execution of a decree against the owner.

S. C. (ISTAR) HOIDYANATH JEO v. PEARY CHURN DIXI 8 C. W. N., 728

(h) SALARY.

12.—Military officer—Army Act (41 & 45 Vict., cap. 38), ss. 135, 151—Army (Annual) Act, 1895 (54 Vict., cap. 5), s. 4—Civil Procedure Code (Act XIV of 1882), ss. 2, 266—"Public officer"

LLOYD (1901). I. L. R., 25 Mad., 402

13.—Railway servant—Execution of decree—Attachment of salary—Prohibitory order—Railway servants, salaries of—Civil Procedure Code (Act XIV of 1882), ss. 262, 617—Small Causes Court, jurisdiction of—Disbursing office outside the jurisdiction of the Court—Transfer of

ATTACHMENT—continued.**1. SUBJECTS OF ATTACHMENT—continued.****(c) DECREES.**

8.—Money-decree—*Civil Procedure Code (Act XIV of 1882), s. 273—Decree for dissolution of partnership—Money decree—Execution of money-decree—Attachment of decree for dissolution of partnership.*—Certain creditors of a partnership obtained a money-decree against the firm. In execution of their decree they sought to attach and sell a decree for the dissolution of the firm and for the

sold. The proper remedy in such cases is by proceedings under s. 273 of the Civil Procedure Code *SIDLINGAPPA DIN IRAPPA v SHANKARAPPA DIN KARIBASAPPA (1903)* . I. L. R. 27 Bom. 558

7.—*Civil Procedure Code, s. 28*—A decree upon a mortgage is not a money-decree within the meaning of s. 273 of the Code.

[6 C. W. N., 5

(d) EXPECTANCY

8.—Future rents and profits of ghatwal—Decree, attachment in execution of—Ghatwali estate—Attachment of future rents and profits—Prohibitory order—Receiver—Future rents and profits.

(e) JOINT FAMILY AND REVERSIONARY INTERESTS.

8.—The effect of s. 80 of the Insolvent Debtors' Act and the s. 273 of the Civil Procedure Code of the Code of
BRAHMAYYA
SWAMY (1902)

(f) MESSE PROFITS.

10.—*Civil Procedure Code (Act XIV of 1882), ss. 235, 273, 543—Execution—Decree for money—*

ATTACHMENT—continued.**1. SUBJECTS OF ATTACHMENT—continued.****(f) MESSE PROFITS—concluded.**

of Civil Procedure to recover the mesne profits by way of execution. Held that he was not entitled to do so. The right of the judgment-debtor to recover the mesne profits by way of restitution was not a decree for money within the meaning of s. 273 of the Code of Civil Procedure. Such a right might be enforced by suit or by summary process in execution under s. 273 of the Code of Civil Procedure.

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NARAYANA PATTAR (1900)

[I. L. R., 24 Mad., 841

(g) OFFERINGS TO HINDU DEITY.

11.—*Civil Procedure Code (Act XIV of 1882), s. 273*

S. C. (JAYAR HOIDYANATH JEO v PHARY CHURN DEY) 6 C. W. N., 728

(h) SALARY.

12.—Military officer—*Army Act (ss. 43 & 45, Vict., cap. 58), ss. 136, 151—Army (Annual) Act, 1884*

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moiety of the salary of the officer in the Army Corps, under
Procedure

I. L. R.

LLOYD (1901)

I. L. R., 25 Mad., 402

13.—Railway servant—Execution of decree—Attachment of salary—Prohibitory order—Railway servants, salaries of—*Civil Procedure Code (Act XIV of 1882), ss. 268, 617—Small Cause Court, jurisdiction of—Disbursing office outside the jurisdiction of the Court—Transfer of*

decree-holder then applied under s. 273 of the Code

ATTACHMENT—continued.**1. SUBJECTS OF ATTACHMENT—concluded.****(A) SALARY—concluded.**

for execution to the Court within the local limits of which the disbursing office is situate. A disbursing officer who has so far submitted to such a prohibitory order as to recover and keep in deposit with him the

(1) TRUST PROPERTY.

14.—*Civil Procedure Code (Act XIV of 1882), s. 622—Decree, execution of—Attachment of trust property—Jurisdiction—Small Cause Court—Notice—Procedure, irregularity of—*Under a decree of the Presidency Small Cause Court (the decree being a personal one against the judgment-debtor), trust property, of which the judgment-debtor was the trustee, was attached in execution, the beneficiaries under the trust not being parties to the proceedings. *Held* that the attachment of the trust property was irregular and improper; and that the

SUMMARY OF ALL NOTES: (1) LIMIT THE CIRCUMSTANCES

ATTACHMENT—concluded.**2. ATTACHMENT BEFORE JUDGMENT—concluded.**

order awarding compensation under s. 431 of the Code of Civil Procedure. *NARASINGA BHAKSHI v. GOVINDA BHAKSHI* (1900) *I. L. R.*, 24 Mad., 82.

18.—*Civil Procedure Code (Act XIV of 1882), s. 103—*

[7 C. W. N., 216.]

3. ALIENATION DURING ATTACHMENT.

17.—*Code, made when decree—*Where a party prosecuting a decree is compelled to take out another execution, his title should be presumed to date from the second attachment. *Pudumones Dossee v. Mathoora Nath Choudhry* (1973), 12 B. L. R., 411, and *Hafiz Suleman Y. Sheikh Abdullah* (1894), *I. L. R.*, 16 All., 133, referred to *KISHAY LAL v. CHABAT SIMON* (1900) *I. L. R.*, 23 All., 114.

18.—*Mahomedan law—Will—Testator—Request to stranger of more than one-third of testator's property—Consent of heirs—Alienation—Civil Procedure Code (Act XIV of 1882), s. 276—*Where a Mahomedan, by his will, bequeaths more than one-third of his whole property to a stranger, the consent of his heirs to such bequest.

execution of a decree against the testator's heirs, is good, and does not amount to an alienation such as is prohibited by s. 276 of the Civil Procedure Code (Act XIV of 1882). *DAULATHAM KHUSHALCHAND v. ABDUL KAYUM KARUDIN* (1902) *I. L. R.*, 26 Bom., 497.

ATTEMPT TO COMMIT OFFENCE.

See FORGERY I. L. R., 25 Mad., 728

See PENAL CODE, s. 422

[*I. L. R.*, 28 Calc., 314]

1.—*Dacoity—Act XLV of 1860 (Indian Penal Code), ss. 397, 511—Attempt to commit dacoity—Use of arms in endeavouring to effect escape—Conviction, under what sections to be recorded—*Where several persons were found endeavouring to break into a house, and some of them, being armed, used violence, but only in attempting to break in, they could not be convicted of dacoity. *See s. 411, 78.*

2. ATTACHMENT BEFORE JUDGMENT.

15.—*Civil Procedure Code (Act XIV of 1882), ss. 491, 559—Attachment before judgment—Compensation—Appeal—*There is no appeal from an

ATTACHMENT—continued.

1. SUBJECTS OF ATTACHMENT—continued.

(c) DECREES.

6.—Money-decree—Civil Procedure Code (Act XIV of 1882), s. 273—Decree for dissolution of partnership—Money decree—Execution of money-decree—Attachment of decree for dissolution of partnership—Certain creditors of a partnership

dissolution could so far be regarded as a money-decree, and could therefore be attached, but not sold. The proper remedy in such cases is by proceedings under s. 273 of the Civil Procedure Code. *SIDLINGAPPA BIN ISAPPA v. SHANKARAPPA BIN KANISAPPA* (1903) . I. L. R., 27 Bom., 556

7.—Civil Procedure Code, s. 23—A decree upon a mortgage is not a money-

U. L. W. L., 3

(d) EXPECTANCY.

8.—Future rents and profits of ghatwal—Decree, attachment in execution of—Ghatwal estate—Attachment of future rents and profits—Prohibitory order—Receiver—Future rents and profits that may become due to a ghatwal cannot, as such, be attached in execution of a decree against him. *Haridas Acharjia Chowdhry v. Baroda Kishore Acharjia Chowdhry* (1899), I. L. R., 27 Calc., 83, followed. *UDY KUMARI GHATWALIN v. HARI RAM SHARA* (1901). I. L. R., 28 Calc., 483

(e) JOINT FAMILY AND REVERSIONARY INTERESTS.

9.—The effect of s. 30 of the Insolvent Debtors' Act and the analogous provision contained in s. 266 of the Code of Civil Procedure considered. *NUNHA BRAHMAYYA SETTI v. CHAUDHARAYINA VENKATASWAMY* (1902) . I. L. R., 26 Mad., 214

(f) MESNE PROFITS.

10.—Civil Procedure Code (Act XIV of 1882), ss. 235, 273, 583—Execution—Decree for money—Attachment of a right to recover mesne profits by way of restitution—A judgment-debtor was compelled by a decree obtained against him to deliver up possession of certain land. On appeal, the High Court reversed the decree under which he had been dispossessed, and declared him to be entitled to recover possession, with mesne profits. The holder of another decree against the same judgment-debtor attached, in execution of his decree, the judgment-debtor's right to recover the mesne profits. The decree-holder then applied under s. 273 of the Code

ATTACHMENT—continued.

1. SUBJECTS OF ATTACHMENT—continued.

(f) MESNE PROFITS—continued.

of Civil Procedure to recover the mesne profits by way of execution. Held that he was not entitled to do so. The right of the judgment-debtor to recover the mesne profits by way of restitution was not a decree for money within the meaning of s. 273 of

MAHATANA PATTAR (1900)

(I. L. R., 24 Mad., 341)

(g) OFFERINGS TO HINDU DEITY.

11.—Civil Procedure Code (Act XIV of 1882), s. 266—"Saleable property"—Right to receive offerings to an idol—"Disposing power" over such offerings—Decree, execution of—Offerings which may in future be made to a Hindu idol cannot be attached in execution of a decree against the idol, the right to receive such offerings not being "saleable property" within the meaning of s. 266 of the Civil Procedure Code. *SHILOJANUND JOSA v. PRABY CHABAR DEX* (1902) . I. L. R., 29 Calc., 470; *S. C. (ISVAR HOIDYANATH JEO v. PRABY CHURN DEX)* . 6 C. W. N., 728

(h) SALARY.

12.—Military officer—Army Act (44 & 45 Vict., cap. 58), ss. 136, 151—Army (Annual) Act, 1895 (54 Vict., cap. 7), s. 4—Civil Procedure Code (Act XIV of 1882), ss. 2, 266—"Public officer"

Procedure. *Calcutta League Association v. Angliss*, I. L. R., 24 Calc., 102, followed. *WATSON v. LLOYD* (1901) . I. L. R., 25 Mad., 402

13.—Railway servant—Execution of decree—Attachment of salary—Prohibitory order—Railway servants, salaries of—Civil Procedure Code (Act XIV of 1882), ss. 268, 617—Small Cause Court, jurisdiction of—Disbursing office outside the jurisdiction of the Court—Transfer of decree for execution—A Small Cause Court has no authority to attach the salary of a railway servant

ATTACHMENT—continued.**1. SUBJECTS OF ATTACHMENT—concluded.****(A) SALARY—concluded.**

for execution to the Court within the local limits of which the disbursing office is situate. A disbursing officer who has so far submitted to such a prohibitory order as to recover and keep in deposit with him the

108, explained. *ABDUL GAFUR & ALBIN* (1903)
[I. L. R., 30 Calc., 713; a.c., 7 C. W. N., 821]

(i) TRUST PROPERTY.

14.—*Civil Procedure Code (Act XIV of 1882), s. 622—Decree, execution of—Attachment of trust property—Jurisdiction—Small Cause Court—Notice—Procedure, irregularity of—Under a decree of the Presidency Small Cause Court (the decree being a personal one against the judgment-debtor), trust property, of which the judgment-debtor was the trustee, was attached in execution, the*

ATTACHMENT—concluded.**2. ATTACHMENT BEFORE JUDGMENT—concluded.**

order awarding compensation under s. 421 of the Code of Civil Procedure *NARASINGA BRAHMANI v. GOVINDA BRAHMANI* (1900) I. L. R., 24 Mad., 62.

16.—*Civil Procedure Code (Act XIV of 1882), ss. 483 and 648—Property outside jurisdiction—Case in which an order made attaching before judgment property outside the jurisdiction. RAM PRATAP JHAWAR v. MADHO RAI* (1902)

[7 C. W. N., 218]

3. ALIENATION DURING ATTACHMENT.

17.—Two attachments—*Civil Procedure Code, s. 278—Mortgage alleged to have been made pending an attachment—Attachment when to be considered as raised—Execution of decree—Where a party prosecuting a decree is compelled to take out another execution, his title should be presumed to date from the second attachment. Puddomones Dossee v. Mathoora Nath Choudhry* (1973), 13 B. L. R., 411, and *Hafis Suleman & Sheikh Abdullah* (1894), I. L. R., 16 All., 133, referred to. *KISHAN LAL v. CHABAT SINGH* (1900) I. L. R., 23 All., 114

18.—*Mahomedan law—Will—Testator—Request to stranger of more than one-third of testator's property—Consent of heirs—Alienation—Civil Procedure Code (Act XIV of 1882), s. 276—Where a Mahomedan, by his will, bequeaths more than one-third of his whole property to a stranger, the consent of his heirs to such bequest,*

good, and does not amount to an alienation such as is prohibited by s. 276 of the Civil Procedure Code (Act XIV of 1882). *DAULATRAM KUTSALCHAND & ABDUL KATUM NARUDIN* (1902)
[I. L. R., 26 Bom., 497]

ATTEMPT TO COMMIT OFFENCE.

See FORGERY I. L. R., 25 Mad., 728

See PENAL CODE, s. 422.

[I. L. R., 28 Calc., 314]

1.—*Dacoity—Act XLV of 1900 (Indian Penal Code), ss. 397, 511—Attempt to commit dacoity—Use of arms in endeavouring to effect escape—Conviction, under what sections to be recorded—Where several persons were found en-*

2. ATTACHMENT BEFORE JUDGMENT.

15.—*Civil Procedure Code (Act XIV of 1882), ss. 421, 588—Attachment before judgment—Compensation—Appeal—There is no appeal from an*

s. 511 of the Indian Penal Code *QUEEN v. KOONTS* (1867), 7 W. R., Cr. R., p. 43, referred to. *QUEEN v. EXPRESS & BANI* (1800) I. L. R., 23 All., 78.

ATTEMPT TO COMMIT OFFENCE

—concluded.

2.—**Forgery—Act XLV of 1860 (Indian Penal Code), ss. 193, 511—Fabricating false evidence—Attempt to commit forgery.**—One Durga Charan Gir had an ejectment case against Ram Ghulam, which was decided against him. After this, on the 23rd of November, 1901, Durga Charan took his servant Daulat to the town of Padrauna, and there purchased an 8-anna stamp paper in the name of Ram Ghulam. Daulat personated Ram

facts, that Durga Charan was properly convicted of the offence of abetting the fabrication of false evidence, though his acts did not amount to an attempt to commit forgery. *Queen-Empress v. Mula (1879)*, 1 L. R., 2 All., 105, followed. *EMPEROR v. DURGACHARAN GIR (1902)* 1 L. R., 25 All., 76

ATTESTATION.

See DEED—EXECUTION

[5 C. W. N., 454

See DEED—ATTESTATION.

—of mortgage—

See EVIDENCE ACT, s. 68.

[6 C. W. N., 395

ATTORNEY.

See ATTORNEY AND CLIENT.

See LIMITATION ACT, 1877, SCH. II, ART. 179—NATURE OF APPLICATION—IRREGULAR AND DEFECTIVE APPLICATIONS. . . 1 L. R., 23 All., 499

—change of—

See ATTORNEY AND CLIENT.

[1 L. R., 29 Calc., 63

See PRACTICE—CIVIL CASES—NEXT FRIEND. . . 1 L. R., 29 Calc., 264

ATTORNEY AND CLIENT.

See COSTS—SPECIAL CASES—ATTORNEY AND CLIENT. . . 5 C. W. N., 306

1.—**Duties of attorney—Attorney, application for change of—Discharge by attorney himself—Lien on cause-papers—Duties of attorney on record—Costs—Refusal by attorney to act until costs incurred are paid—Right of the plaintiff to**

ATTORNEY AND CLIENT—continued.

costs are paid ———— But with expressly or b he must give u whom the client proposes to go, only retaining his usual lien on such papers *Heslop v. Metcalfe (1937)*, 3 Mgl. & Cr., 183; *Robins v. Goldingham (1872)*, L. R., 13 Eq., 440; *Wilson v. Emmet (1854)*, 19 Beav., 233, relied upon. *ATUL CHANDER MOOKERJEE v. SOSHI BHUSAN MULLICK (1901)* [1 L. R., 29 Calc., 63; s.c., 6 C. W. N., 215

2.—**Managing clerk—Agreement for remuneration—Agreement kept secret from client—Fiduciary relationship**—The plaintiff was managing clerk of a firm of Solicitors in Bombay, who were acting as Solicitors for one Cursondas in a suit which he (Cursondas) had filed in the High Court to

which he (Cursondas) had filed in the High Court to

that there was a fiduciary relationship existing between the plaintiff and Cursondas; the plaintiff

action was not known to Cursondas (and this is the view we hold), it was vitiated as against him, so far as Bhai Jivanji (the plaintiff) is concerned, by reason of the secrecy of the profit sought; if it was known to him, and he was a party to it, the transaction was incapable of supporting Bhai Jivanji's claim, in that it was unconscionable, without consideration, and unsustainable by reason of the fiduciary relation in which he stood to the donor and the absence of independent advice. It is true that Cursondas is not now before us resisting the claim;

ATTORNEY AND CLIENT—concluded.

which he could not have recovered from Cursondas directly. *HARITALAYDAS HARIDAS v. BHAI JIVANJI* (1902) . . . I. L. R., 28 Bom., 689

3.—Remuneration—Suit—Promissory note
—Agreement by attorney to take a gross sum in lieu of costs—Client in Attorney's day book.—

had competent and independent advice to measure the amount of service rendered by the attorney. *Tyrrell v. Bank of London* (1862), 10 H. L. C., 26, 44; *O'Brien v. Lewis* (1862), 32 L. J. Ch., 669; *Holman v. Loynes* (1854), 4 De G. M. and G., 270; *Rhodes v. Bate* (1865), L. R., 1 Ch. 4. C., 252, 257; *Morgan v. Minett* (1877), L. R., 6

by acting partly as attorney and partly as agent of the same client. *UBOJENDRO NATH MULLICK v. LUCKHIMONY DASSEN* (1902)

[I. L. R., 28 Calc., 695; s.c., 6 C. W. N., 618]

AUCTIONEER.

— attachment of money payable to—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DEBTS. I. L. R., 23 All., 185

AUCTION-PURCHASER.

See CIVIL PROCEDURE CODE, s. 244—

QUESTIONS IN EXECUTION OF DECREE;

PARTIES TO SUIT.

See SALE IN EXECUTION OF DECREE—
ERRORS IN DESCRIPTION OF PROPERTY SOLD . . . I. L. R., 28 Calc., 370

AWARD.

See APPEAL—ARBITRATION.

See ARBITRATION.

B**BAIL.**

See FALSE EVIDENCE—GENERAL CASES.
[5 C. W. N., 615]

See RECOGNIZANCE TO APPEAR.
[I. L. R., 30 Calc., 107]

— cancellation of—

See ACCUSED PERSON. 5 C. W. N., 110

— grant of, after Coroner's refusal—

See CORONER . . . 7 C. W. N., 889

BAIL—concluded.

— release on—

See FALSE IMPRISONMENT.

[I. L. R., 30 Calc., 872]

—Release on bail of a person convicted by Sessions Court of Madras pending appeal to Privy Council—Jurisdiction of High Court.—A person was, at Criminal Sessions held in Madras, convicted of certain offences, and sentenced to imprisonment and fine. Upon a certificate being granted by the Advocate-General under s. 26 of the Letters

BAILEES.

See RAILWAYS ACT (IX of 1890), s. 72

[I. L. R., 30 Calc., 257]

BALANCE OF ACCOUNT.

See LIMITATION ACT, 1877, SCH. II,
ART. 94

BALCONY.

See BOMBAY DISTRICT MUNICIPAL ACT
(BOM. ACT VI of 1873), ss. 33 AND 42.

[I. L. R., 27 Bom., 221]

BANIAN OF FIRM.

See LIEN . . . I. L. R., 30 Calc., 937

BANK OF BOMBAY.

See PRESIDENTY BANKS ACT (XI of 1876),
ss. 36, 37 . . . I. L. R., 25 Bom., 52

BANKER AND CUSTOMER.

—Entry in Pass book—Cheque lodged by customer for collection—Effect of entry in customer's pass-book of each cheque as if collected—*Estoppel*.—Early in March, 1900, the Hope Mills Company purchased 600 bales of cotton from the plaintiff at Rs 78 per candy, but, being unable to accept and pay for them, it was arranged between

BANKER AND CUSTOMER—continued.

the Company and the plaintiffs that one Shridhan should take them over from the plaintiffs at Rs243-8-0 per candy (the price having fallen in the meantime), and that the Company should pay the plaintiffs the difference of price. In fulfilment of this agreement, the Company sent to the plaintiffs a cheque for Rs9,500, drawn by them on the Commercial Bank, being approximately the amount of the difference. This cheque was given to the plaintiffs

after the delivery had proceeded thus far the plain-

BANKER AND CUSTOMER—concluded.

The parties thus did not deal on equal terms, and the defendant Bank was therefore not bound by the entry in the pass-book as a receipt. *Martin v. Morgan (1819)*, 1 Bro. and B., 289, referred to. *MOWJI SHAMJI v. NATIONAL BANK OF INDIA (1900)* [I. L. R., 25 Bom., 499]

BARRISTER.

—Counsel and client—Suit by client to recover fees to Counsel—Cause of action—Status of a barrister practising as an advocate in the High Court for the North-Western Provinces—Civil Procedure Code, s. 622—Revision—An English or Irish barrister who, in virtue of his call to the Bar, is enrolled as an advocate in the High Court of Judicature for the North-Western Provinces, and thereby is authorized to practise as an advocate in the said High Court and in the Courts subordinate thereto, is, in respect of fees paid to him by a client for professional service, in exactly the same position as if he were practising in England or Ireland, that is to say, the fees received by him for professional services are mere *honoraria*, and he can neither sue for the recovery of, nor be sued for the return of, such fees. *Kennedy v. Brown (1862)*, 82 L. J., C. P., 131; *Robertson v. McDonough*, 14 Cox., C. C., 469; *Krishna Row v. H. F. Muttukrishna (1869)*, 4 Mad. H. C. Rep., 244; *Smith v. Gunneshee Lal (1871)*, N. W. P. H. C. Rep., 1871, p. 88; *Achamparambath Cheria Kunhammu v. Gunta (1881)*, I. L. R., 3 Mad., 188; Reference under Stamp Act, s. 46 (18-5), I. L. R., 9 Mad., 140, Stamp Reference (1893), I. L. R., 16 All., 182; *Queen v. Doutre (1894)*, 9 A. C., 745; and *In re LeBrasseur and Oakley*, L. R., 1896, 2 Ch., 487, referred to. A client who had paid a fee to a barrister for profes-

20 All., 78, referred to. *ROSA ALSTON v. PITAMBER DAS (P. N. 1903)* I. L. R., 25 All., 609

the faith of its being an entry of cash actually received, and, further, the cheque was a post-dated cheque, and the plaintiffs when lodging it clearly had doubts as to whether it would be honoured or not, while the defendant Bank had no knowledge of any circumstance justifying doubts as to its payment.

BEHAVIOUR.

See **SECRECY FOR GOOD BEHAVIOUR.**

BENAMIDAR.

See **BENAMI TRANSACTION.**

See **SALE IN EXECUTION OF DECREE—**
SETTING ASIDE SALE—GENERAL CASES
[*I. L. R.*, 29 Calc., 682]

BENAMI TRANSACTION.

Col.

1. GENERAL CASES 93
2. CERTIFIED PURCHASERS—
CIVIL PROCEDURE CODE, 1882, s. 317 . . . 94

See **MADRAS REVENUE RECOVERY ACT, 38**
AND 39 [*I. L. R.*, 25 Mad., 655]

See **SALE IN EXECUTION OF DECREE—IN-**
VALID SALES—FRAUD
[5 C. W. N., 266]

1. GENERAL CASES

1.—**Bond—Realisation by benamidar of money**
due on a bond in his name—Payment of such money
[*I. L. R.*, 25 Mad., 655]

BENAMI TRANSACTION—continued.**1. GENERAL CASES—concluded.**

(1899), *I. L. R.*, 27 Calc., 231; *Taylor v. Bowers*
(1876), *L. R.*, 1 Q. B. D., 291, referred to. But
where the ostensible transferee never had any
exclusive possession of the property in question,
[*I. L. R.*, 29 Calc., 682]

3—Suit to recover possession of property.

—A benamidar, as such, is not entitled to maintain a
suit for recovery of possession of immovable property
of which he is a mere benamidar. *Hari Gobind*
Adhikari v. Akhoy Kumar Mozumdar (1899),
I. L. R., 16 Calc., 364, affirmed *Rhola Pershad v.*
Ram Lal (1896), *I. L. R.*, 24 Calc., 84, and *Rajji*
Appaji Kulkarni v. Mahadev Bapuji Kulkarni
(1900), *I. L. R.*, 28 Bom., 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100]

2. CERTIFIED PURCHASERS.

CIVIL PROCEDURE CODE, 1882, s. 317.

4.—**Suit for establishment of title, against**
[*I. L. R.*, 25 Mad., 655]

Procedure Code is no bar to the suit; and that the
protection afforded by that section extends only to
the certified purchaser and not to one who derives
title from him. *Raj Chandra Chuckerarti v. Dina*
Nath Saha (1906), 2 C. W. N., 433; *Dulhoda*
Sundari Dassi v. Sreemuntha Joddar (1899), 1
C. W. N., 657; *Theyyavelan v. Kochan* (1897),
I. L. R., 21 Mad., 7, referred to. *Nokoni Datta*
v. SARUP CHUNDER DUTTA (1900)

[5 C. W. N., 341]

5.—**Execution of decree—Sale in execution—**
Suit against certified purchaser for recovery of
part of the property purchased—*Kishan Lal* and
Tolka Mal were joint mortgagees. After their death,
Durga, the adopted son of *Kishan Lal*, and *Todar*,
the son of *Tolka Mal*, brought a suit upon the
mortgage, and obtained a decree for sale. After this
decree had been obtained, it was settled, by a suit
ending in a consent decree, that one *Musammam Fano*

and while the suit was
partially carried into effect, the Court will not
lend its aid to enable the transferor, who has thus
defrauded his creditors, to get his property back
from the transferee. *Gobardhan Singh v. Ritu*
Roy (1896), *I. L. R.*, 23 Calc., 962; *Kali Charan*
Pal v. Rasik Lal Pal (1896), *I. L. R.*, 23 Calc.,
962 (note); *Banka Behary Datta v. Raj Kumar Das*

BENAMI TRANSACTION—concluded.**2. CERTIFIED PURCHASERS—concluded.****CIVIL PROCEDURE CODE, 1882, s 317—concluded.**

was entitled along with Durga to a certain portion of the property of Kishan Lal. Kishan Lal and Today

8.—Suit by beneficial purchaser against certified purchaser—Suit not taken out of the section by reason of the beneficial purchaser being in possession.

certificate. He further alleged that the purchase-money had been paid by him, and that he had all

BENCH OF MAGISTRATES.**See DISCHARGE OF ACCUSED.**

[7 C. W. N., 527]

See WITNESS—CRIMINAL CASES—STATEMENTS OF WITNESSES.

[I. L. R., 29 Calc., 483]

BENGAL ACT.**—1862—VIII—****See ZAMINDARI DAKS.**

[I. L. R., 28 Calc., 283]

—1866—IV—**See CALCUTTA POLICE ACT.****—1867—II—****GAMBLING.****BENGAL ACT—continued.****—1868—VII—****s. 2—****See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT VII OF 1880).**

[I. L. R., 29 Calc., 73]

s. 8—**See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.**

[I. L. R., 30 Calc., 17 C. W. N., 377]

—1868—VIII—**ss. 58, 80, 64—****See SAME FOR ARREARS OF RENT—UNDER-TENURES, SALE OF.**

[I. L. R., 30 Calc., 550]

—1876—III—**See BENGAL IRRIGATION ACT.****VII—****See LAND REGISTRATION ACT.****VIII—****See ESTATES PARTITION ACT.****—1878—VII—****See BENGAL EXCISE ACT.****—1879—VIII—****See RESUMPTION—EFFECT OF RESUMPTION—EFFECT ON PATTAS.**

[I. L. R., 30 I. A., 159]

IX—**See COURT OF WARDS ACT.****—1880—VII—****See PUBLIC DEMANDS RECOVERY ACT, 1880.****IX—****See BENGAL CESS ACT.****—1882—II, ss. 76 (a), 78—****See EMBANKMENT.**

[I. L. R., 30 Calc., 481]

—1884—III—**See BENGAL MUNICIPAL ACT.****—1888—II—****See CALCUTTA MUNICIPAL CONSOLIDATION ACT.****—1889—III—****See BENGAL PRIVATE FISHERIES PROTECTION ACT.****—1895—I—****See PUBLIC DEMANDS RECOVERY ACT, 1895.****—1899—III—****See CALCUTTA MUNICIPAL ACT.**

BENGAL AGRA AND ASSAM CIVIL COURTS ACT (XII OF 1887).

See VALUATION OF SUIT—APPEALS.

[6 C. W. N., 348]

—s. 10—

See SUBORDINATE JUDGE, JURISDICTION OF . . . I. L. R., 23 All., 455

—s. 11—

See TRANSFER OF CIVIL CASE—GENERAL CASES . . . I. L. R., 25 All., 183

—ss. 13, 17—

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION. [5 C. W. N., 150]

—s. 17—

See TRANSFER OF CIVIL CASE—GENERAL CASES . . . I. L. R., 25 All., 183

—s. 18—

See RENT, SUIT FOR—BY WHAT COURT TRIABLE . . . I. L. R., 30 Calc., 453

—s. 21—

See JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION. [I. L. R., 25 All., 277]

See VALUATION OF SUIT—SUITS—PARTITION . . . I. L. R., 24 All., 881

—s. 37—

See HINDU LAW—HUSBAND AND WIFE [I. L. R., 28 Calc., 751]

See MAHOMEDAN LAW—INHERITANCE. [I. L. R., 23 All., 20]

BENGAL CESS ACT (BEN. ACT IX OF 1880)

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

[I. L. R., 30 Calc., 794]

—Income-tax—*Mela*, profits of—Liability to pay road-cess tax—Board of Revenue, authority of, to frame rules under Ben. Act IX of 1880, s. 106.—The profits of a *mela* cannot be regarded as income derived from agriculture, and are not exempt from income-tax under s. 5 of the Income-Tax Act (II of 1886). Land, the profits of which are subject to income-tax, should not be assessed with road-cess tax, except when such land is also used for agricultural purposes. S. 111. B. rule 33 (p. 74, Cess Act, 1880) is not such a rule as the Board of

BENGAL CESS ACT (BEN. ACT IX OF 1880)—concluded.

—s. 4—

Cultivating raiyat.—*Tenure holder*.—A tenant holding land and paying as rent therefor a sum of money exceeding one hundred rupees per annum, for the purposes of assessment under the Cess Act, a tenure-holder and not a cultivating raiyat. CASPAREZ v. KUMAR SINGH (1900) [5 C. W. N., 535]

—ss. 34, 35, 36, 41—

Publication of valuation roll—Liability to pay cess for rent-paying land.—Liability to pay road-cess, so far as rent-paying lands are concerned, does not depend upon the publication of the valuation roll under s. 34 of the Cess Act. *Bhag- . . .*

—s. 95—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD-CESS PAPERS. [I. L. R., 30 Calc., 1033]

—s. 98—

Arrears of cess—Cess whether a

—s. 108—

A rule made under s. 100 held to be ultra vires.

See BENGAL CESS ACT (BEN. ACT IX OF 1880) . . . I. L. R., 28 Calc., 697

BENGAL EMBANKMENT ACT (BEN. ACT II OF 1882).

—ss. 3, 77—

See EMBANKMENT . . . 5 C. W. N., 108

—ss. 6, 76 (1), 80—

See EMBANKMENT . . . 7 C. W. N., 288

—ss. 76 (a), 78—

See EMBANKMENT. [I. L. R., 30 Calc., 481]

BENGAL EXCISE ACT (BEN. ACT VII OF 1878).

—s. 53—

Ganja—Sale of, without license, by servant, in presence of master—Receipt of money

BENGAL EXCISE ACT (BEN. ACT VII OF 1878)—concluded.

—s. 53—concluded.

by servant—Servant, liability of—Penal Code (Act XLY of 1860), ss. 34, 40 and 114.—Where both

(1902) . . . I. L. R., 29 Calc., 496

—s. 59—

Excise—Commission by servant of licensed manufacturer or vendor of act in breach of conditions of license—Liability of servant.—

ditions of the license of such manufacture or vendor not otherwise provided for in the Act. *The Empress v. Nuddiar Chand Shaw* (1891), I L. R., 6 Calc., 832, and in the matter of *Nomollu Akond* (1892), 11 C. L. R., 418, approved. *Ishar Chunder Shaha* (1878), 19 W. R., Cr., 34, distinguished. *Empress v. Baney Madhub Shaw* (1881), I. L. R., 8 Calc., 207, overruled in the matter of *Kalu Mal Khatri* (29 1902) [I. L. R., 29 Calc., 606; s.c., 6 C. W. N., 674]

BENGAL GENERAL CLAUSES ACT.

See GENERAL CLAUSES ACT (BENGAL ACT I OF 1899)

BENGAL IRRIGATION ACT (BEN. ACT III OF 1876).

—ss. 1 and 6—

—Ben. Act III of 1876, ss. 1, 6, 7, 8—Commencement of—Notification—Collector—Notice.—An order made by the Lieutenant-Governor of Bengal under s. 1 of the Bengal Irrigation Act, 1876, was published in the Calcutta Gazette on the 28th December, 1881, extending that Act to the district of Burdwan, and

Act, the Lieutenant-Governor declared that the water of certain rivers and channels, including that of the river Banks in the district of Burdwan, would be applied by the Government for the purposes of the Eden Canal after the 1st April, 1882. Held that the notification purporting to be made under s. 6 of the Bengal Irrigation Act was of no legal effect, having

BENGAL IRRIGATION ACT (BEN. ACT III OF 1876)—concluded.

—ss. 1 and 6—concluded.

been published before the Act was extended to the district of Burdwan; that the acts of the officers of Government under that notification with regard to the river Banks were without any legal

ADHICARY (1900) . . . I. L. R., 28 Calc., 487

BENGAL MUNICIPAL ACT (BEN. ACT III OF 1884).

—ss. 175, 235, 236, 237, 238, 273—

Building—Commencement of

Held that the whole order was illegal. The case did not come under s. 273 (1) of the Act; and there was no necessity for the accused to have obtained permission. *EMPEROR v. MATHURA PRASAD* (1902) [I. L. R., 29 Calc., 491]

—ss. 238, 273—

See ante, ss. 175, ETC.

Sanction to build when not given within specified period—Right to build without sanction—Period of sanction, computation of—

such cases is to be computed from the date when complete plans and specifications are submitted in such a form as to make consideration by the Municipal Commissioners possible. *SEWANDAN RAI KAYAR v. VICE-CHAIRMAN OF THE DARJEELING MUNICIPALITY* (1900) . . . 5 C. W. N., 42

—ss. 263, 273—

Keeper of hackney carriage—Milkman—License.—Where it was found that a person had 7 or 8 ponies and 4 cows and some sheep, and let out one carriage and a pair of ponies on

BENGAL MUNICIPAL ACT (BEN. ACT III OF 1884)—concluded

—ss. 263, 273—concluded.

monthly hire and kept the same in her stable, and also kept other ponies for sale and supplied milk to others from her cows. *Held* that the facts found did not render her liable to punishment under s. 273 (2) read with s. 263 of the Bengal Municipal Act, 1884. *FAIRWEATHER v. SURESH CHANDER DUTT* (1900) 5 C. W. N., 331

—ss. 270, 271, 353—

obedience of—Proof necessary—Limitation—

tions under the Act, or under any by-law made in pursuance thereof, unless they are instituted within three months next after the commission of such offence or within three months of the date when such commission of the offence is brought to the knowledge of the Chairman. The service of requisition on the accused who is charged with disobedience thereof, as well as the requisition itself, should be proved and found before there can be a conviction for an offence under s. 271 of the Act. *BIDHU BASU v. MULICK v. ASSENHOLE MUNICIPALITY* (1901) [6 C. W. N., 167]

—s. 273—

See *ante*, ss. 175, etc.; ss. 238 AND 273; 263 AND 273

—s. 353—

See *ante*, ss. 270, 271, 353.

BENGAL, NORTH-WESTERN PROVINCES AND ASSAM CIVIL COURTS ACT (XII OF 1887).

See *BENGAL, AGRA AND ASSAM CIVIL COURTS ACT*

BENGAL PRIVATE FISHERIES PROTECTION ACT (BEN. ACT II OF 1889).

—s. 3—

—Fishing in private waters—Bond *fiduciary* claim of right—Jurisdiction of Criminal Court, ouster of—Fishing under a lease—Title of lessor, inquiry as to, if necessary—Explanation of Magistrate to supplement judgment, if proper.—A person who bond *fiduciary* claims to exercise the right of fishing in private waters on the basis of a lease cannot be convicted of an offence under s. 3 of Bengal Act II of 1889. The question as to whether or not the lessee is bound before taking the lease to satisfy himself thoroughly that his lessor

BENGAL PRIVATE FISHERIES PROTECTION ACT (BEN. ACT II OF 1889)—concluded.

—s. 3—concluded.

has a good title to the waters leased, is one which does not properly come into consideration under Bengal Act II of 1889. In the absence of any finding in the judgment of a Magistrate, a finding in the explanation submitted by the Magistrate in showing cause against a rule nisi should not be considered and given effect to at the hearing of the rule. *IN THE MATTER OF NAZIR MALIK v. HAJI GABAR PARGI* (1901) 6 C. W. N., 113

BENGAL REGULATION.

—1817—XX, s. 10—

See *ZAMINDARI DAKS*.

[I. L. R., 23 Cal., 293]

—1819—VIII—

See *LIMITATION ACT*, 1877, SCH. II ART. 23 . . . I. L. R., 33 Cal., 440

See *PATNI TENURE*.

[I. L. R., 23 Cal., 714]

—ss. 3, 4—

See *SALE FOR ARREARS OF RENT—EFFECT OF SALE* . . . I. L. R., 29 Cal., 813

—s. 8—

—Right of suit to recover deficiency for which defaulting 9 of Reg. Civil Court. BA BANDO. W. N., 111

—s. 17 (3)—

See *SALE FOR ARREARS OF RENT—RIGHTS OF PURCHASERS* . . . 6 C. W. N., 784

—1825—XI, s. 4—

See *MALIKANA* . . . 7 C. W. N., 846

—1832—VII, s. 9—

See *CONVENTS* . . . I. L. R., 25 All., 546

BENGAL RENT ACT (X OF 1889).

See *SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL*.

[I. L. R., 28 Cal., 532]

—s. 23 (4)—

See *RENT, SET OFF*.

[I. L. R., 28 Cal., 485]

—s. 23 (5)—

See *LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT* . . . C. W. N., 192

BENGAL RENT ACT (BEN. ACT VIII of 1889).

See LANDLORD AND TENANT—FORFEITURE
—DENIAL OF TITLE:

[I. L. R., 28 Calc., 135]

BENGAL SURVEY ACT (BEN. ACT V OF 1875).

—s. 45—

See PENAL CODE, s. 186

[6 C. W. N., 190]

BENGAL TENANCY ACT (VIII OF 1885).

See LANDLORD AND TENANT

—enhancement of rent—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD-CROSS PAPERS
[I. L. R., 30 Calc., 1033]

—s. 3, cl. (2)—

See post, s. 60 . . . 5 C. W. N., 482

—s. 3, cl. (16)—

See SALE FOR ARREARS OF RENT—INCUMBRANCES . . . I. L. R., 28 Calc., 66

—s. 5 (5)—

See GHATWALI TENURE. 6 C. W. N., 94

—Bengal Tenancy Act (VIII of 1885), ss. 5 (5), 107—Presumption as to kind of tenancy—Tenure-holder and raiyat—Res judicata—Decision of Revenue Court, effect of—Civil Procedure Code (Act XIV of 1882), s. 13—Construction of statute—Where the area of land

Procedure Code, a decree in a previous suit cannot be pleaded as *res judicata* in a subsequent suit unless the Judge by whom it was made had jurisdiction to try and decide, not only the particular matter in issue, but also the subsequent suit itself in which the issue

arose. In this respect this section

BENGAL TENANCY ACT (VIII OF 1885)—continued.

—s. 13—

1.—Sale, confirmation of—Deposit of landlord's fee—Sale certificate, application for—Limitation—Limitation Act (XV of 1877), Sch. II, Art. 178—Civil Procedure Code (Act XIV of 1882), s. 244—Appeal—Second appeal.—There is no

be regarded as one under s. 244, cl. (1), Civil Procedure Code, and as such an appeal and second appeal lie. KRISHNA CHANDRA DUTT v. ANKUL CHANDRA CHUCKERBUTTY (1901) . . . 6 C. W. N., 190

2.—Confirmation of sale—Subsequent payment of landlord's fee—Jurisdiction of Court.—An auction sale was confirmed by the Court, overlooking through mistake the fact that no landlord's fee was paid under s. 13 of the Tenancy Act. Subsequently, on the discovery of the mistake, the purchaser applied for the annulment of the sale to that Court (1903) . . . 6 C. W. N., 388

3.—Confirmation of sale without payment of landlord's fee—Sale, validity of—Application for possession by auction-purchaser—Civil Procedure Code (Act XIV of 1882), ss. 244, 316—Appeal—Second appeal.—Where the sale of a permanent tenure was confirmed without previous payment of the landlord's fee in the manner required

under s. 316, Civil Procedure Code (1882) I. L. R., 28 ANDRA . . . 591

—s. 22 (1)—

See SALE FOR ARREARS OF RENT—INCUMBRANCES . . . I. L. R., 28 Calc., 205

—s. 29—

—Landlord and tenant—Suit to set aside a kabulyat—Enhancement of rent by contract—Consideration for such contract—Agreement to pay enhanced

BENGAL TENANCY ACT (VIII OF 1885)—continued.**—s. 29—concluded.**

rent in settlement of bond fide disputes—Res-jur-
dictio in rem

—s. 30—

—Enhancement suit—Equitable rate—Prevailing rate.—In a suit for enhancement of rent under s. 30 of the Bengal Tenancy Act, the case was referred to arbitration, on the application of the parties, and the arbitrator settled a fair and equitable rate. *Held* that the arbitrator had jurisdiction to do so, inasmuch as the parties declared that they would be bound by what the arbitrator would decide. *GANGA CHARAN ROY v. SASTI MANDAL* (1901)

[8 C. W. N., 614]

—s. 46, cl. (a)—**—s. 49—****See LANDLORD AND TENANT—****EJECTMENT—NOTICE TO QUIT;**

[L. L. R., 28 Calc., 306]

" 29 Calc., 231

6 C. W. N., 377

TRANSFER BY TENANT.

[6 C. W. N., 616, 618]

—s. 50—

See LAND ACQUISITION ACTS (XVIII OF 1893 AND I OF 1894).

[L. L. R., 30 Calc., 801]

1.—Presumption as to uniform payment of rent.—When a tenant has paid rent, for over twenty years prior to the date of suit, at a uniform rate which has not changed, the presumption of law, under s. 50, sub-s. (2), of the Bengal Tenancy Act, would arise if there is no allegation or proof that a tenancy commenced in a particular year after the Permanent Settlement. The mere fact that the tenant shows by documentary evidence that the rate of rent has not changed from a particular year would not preclude him from the benefit of the presumption given by sub-s. (2) of a 50. *MONGOLA v. KUMUD CHUNDER SINGH* (1900) 5 C. W. N., 60

2.—Sub-s. (2)—“Suit or other proceeding under this Act,” meaning of—Suit by landlord to

BENGAL TENANCY ACT (VIII OF 1885)—continued.**—s. 50—concluded.**

Eject the purchaser of a holding on the ground of non-transferability.—Whether the presumption arises in such suit.—The application of s. 50 of the Bengal Tenancy Act is limited to a suit or proceeding under the Bengal Tenancy Act. Where the plaintiff sued for recovery of possession, alleging that the defendant was a trespasser, and the defendant claimed to be a tenant: *Held* that, until the fact that defendant was a tenant was made out, the suit could not be said to be one under the Bengal Tenancy

—s. 51—

—Civil Procedure Code (Act XIV of 1852), s. 13—Res judicata—Rent suit—Presumption.—A decision in a previous rent suit, as to the amount of rent payable, was held not to operate as *res judicata* in a suit for the rent of subsequent years, although it was held that it gave rise to a presumption under s. 51 of the Bengal Tenancy Act that the rents for subsequent years remained the same. *BENI PERSHAD KOERI v. RAJ KUMAR CHOWDEY* (1902)

[11 C. W. N., 589]

—s. 52—

See post, ss. 90, 92, 183. 7 C. W. N., 83

See post, s. 158. 6 C. W. N., 592

1.—Landlord and tenant—Bengal Tenancy Act (VIII of 1885), ss. 52, 183—Additional rent for excess land—Back rent—Suit for rent.—There is

2.—Additional rent, suit for—Enhancement.—A landlord cannot successfully claim additional rent under s. 52 of the Bengal Tenancy Act in respect of

or *misadjusted*. *RAJENDRA LAL GOSWAMI v. CHUNDER BUCHAN GOSWAMI* (1901) 11 C. W. N., 318

3.—Additional rent for increased area—Landlord and tenant—Bengal Tenancy Act (VIII of 1885), ss. 52, 74—Limitation.—All impositions upon tenants, under the denomination of *alawat*, etc., suit

BENGAL TENANCY ACT (VIII OF 1885)—continued.

—s. 52—concluded.

"all stipulations and reservations for the payment of such," referred to in s. 74 of the Bengal Tenancy Act, relate to both past and future stipulations: such stipulations made before the passing of the Bengal Tenancy Act are therefore void. The right to recover additional rent for increased area is a

—s. 60—

—*Suit for rent—Assignment by landlord of portion of interest to a mortgagee—Registered proprietor—"Rent due"—Right of mortgagee, whether may be set up in defence—Bengal Tenancy Act (VIII of 1885), ss. 3, cl. (3), 60—In a suit for rent*

TAGORE (1898) 5 C. W. N., 482

—s. 61—

See post, SCH. III, ART. 2 (a)
[I. L. R., 29 Calc., 283

See INTEREST—MISCELLANEOUS CASES—
ARREARS OF RENT 7 C. W. N., 720

—s. 65—

See post, s. 188 6 C. W. N., 124
See ACQUISITION 7 C. W. N., 170

See SALE FOR ARREARS OF RENT—
INCUMBRANCES; 6 C. W. N., 834
RIGHTS AND LIABILITIES OF PROPRIETORS. 6 C. W. N., 794, 877

—ss. 65 and 188—

—*Sale of a tenure—Co-landlord's decree—Execution*—The sale of a tenure in execution of a decree

SEDMANTA GHOSH (1901) I. L. R., 29 Calc., 219

—s. 67—

See INTEREST—MISCELLANEOUS CASES—
ARREARS OF RENT.

[I. L. R., 28 Calc., 227
29 Calc., 674
7 C. W. N., 203, 720

BENGAL TENANCY ACT (VIII OF 1885)—continued.

—s. 72—

See LANDLORD AND TENANT—TRANSFER
BY LANDLORD 7 C. W. N., 454

—s. 74—

See CASES I. L. R., 28 Calc., 17
[8 C. W. N., 380

See INTEREST—MISCELLANEOUS CASES—
ARREARS OF RENT
[I. L. R., 29 Calc., 674

See PRINCIPAL AND AGENT—LIABILITY OF
AGENTS I. L. R., 30 Calc., 1011

—s. 85—

See LANDLORD AND TENANT—TRANSFER
BY TENANT.

[10 C. W. N., 377, 918, 919
I. L. R., 29 Calc., 148

See SALE FOR ARREARS OF RENT—INCUMBRANCES I. L. R., 28 Calc., 205

—s. 86—

—Nothing in s. 86 of the Bengal Tenancy Act requires the surrender of a raiyat's occupancy right to be in writing. *KHANAKAR ABDUR RAHMAN v. ALI HAFIZ* (1900) I. L. R., 28 Calc., 256 f.
[s.c., 5 C. W. N., 351

—s. 88—

the landlord with the receipt of any proportionate rate of rent by the tahsildar. *BENI PERSHAD KORI v. GONERDHAN KORI* (1902)
[6 C. W. N., 823

—s. 89—

See LIMITATION ACT, 1877, SCH. II, ART. 3—
[7 C. W. N., 218

—ss. 90, 52 and 188—

—*Suit for measurement of area and increased rent—Right of suit—Right of landlord to measure when there is an intermediate tenant—Contract executed between landlord and tenant before the passing of the Bengal Tenancy Act—Estoppel—Joint landlords, who are—A kabuliya executed, before the passing of the Bengal Tenancy Act, by defendant No. 1, the holder of a dar-mourasi patta, in favour of his immediate landlord, a mokuridar, provided that the former should have his name entered in the zamindar's sherista in place of the mokuridar's, and pay rent direct to the zamindar.*

BENGAL TENANCY ACT (VIII OF 1885)—continued.

—ss. 90, 52 and 188—concluded.

spectively. The agreement was ratified by the zamindar. On the zamindar suing defendant No. 1

s. 189, Bengal Tenancy Act. *Panchanan Banerji*

(1902) 7 C. W. N., 83

—ss. 101 to 115 (Ch. X)—

See RENT, SUIT FOR . 6 C. W. N., 914

—ss. 101 to 111A (Ch. X)—

—Jurisdiction of Civil Court—Sust for possession and meane profits—Sust to settle dispute prior to completion of record-of-rights—Status of tenants—Civil Procedure Code (Act XIV of 1892), ss 11, 12—There is no legal bar to the maintenance of a suit in the Civil Court for possession and meane profits by effectment of the defendants from certain plots of land in respect of which a survey and preparation of a record-of-rights have been ordered under Ch. X of the Bengal Tenancy Act (VIII of 1885, as amended by Bengal Act III of 1898), in which record

Choudhry v Durga Churn Law (1897), 1 L. R., 25 Calc., 146, distinguished *TROYLOKYNATH ROSE* v. *MACLEOD* (1900) . 1 L. R., 28 Calc., 28

—ss. 101 to 108 (Ch. X)—

—Res judicata—Civil Procedure Code (Act XIV of 1892), s. 13—Bengal Tenancy Act (VIII of 1885), ss. 101, 102, 103, 104, 105, 106, 107, 108, 117, 118, 119, 143, 155, 189—Record-of-rights—Survey and measurement of land—Rules—Jurisdiction—Revenue-officer—Court—Landlord and

BENGAL TENANCY ACT (VIII OF 1885)—continued.

—ss. 101 to 108 (Ch. X)—concluded.

tenant—Effectment—Bengal Act VIII of 1885, ss. 33, 39—Bengal Act V of 1875.—Ss. 104 to 108 of

ALI KHAN (1902)

[1 L. R., 30 Calc., 339; s.c., 7 C. W. N., 83

—s. 103A—

See RES JUDICATA—ADJUDICATIONS.

[1 L. R., 28 Calc., 471

—s. 104 (2)—

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

[1 L. R., 29 Calc., 252

—s. 105—

See RES JUDICATA—

ADJUDICATIONS;

[1 L. R., 28 Calc., 471

COMPETENT COURT—REVENUE COURTS . 5 C. W. N., 788

—s. 106—

See post, s. 189 . 7 C. W. N., 400

See RES JUDICATA—

PARTIES; . 5 C. W. N., 421

COMPETENT COURT—REVENUE COURTS . 5 C. W. N., 788

—s. 107—

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS . 6 C. W. N., 825

[1 L. R., 29 Calc., 252

—s. 107 (before amendment)—

—Bengal Tenancy Act (VIII of 1885), ss. 107, 109A—Public Demands Recovery Act (Bengal

BENGAL TENANCY ACT (VIII OF 1885)—continued.

—s. 107 (before amendment)—concluded.

estate being under the management of the Court of Wards, a certificate was issued in 1895-96 for the realization of arrears of rent due from B, whose objection to the certificate was disallowed in January, 1897, and in July he instituted this suit for its cancellation or modification. *Held* (1) that the

NATH ROY v. ARDOOL (1901)

[I. L. R., 28 Calc., 676]

—s. 108A—

See APPRAISAL—ORDERS. 7 C. W. N., 440

—ss. 117 to 119—

See ante, ss. 101 to 108

[I. L. R., 30 Calc., 339]

—s. 120, sub-s. (2)—

—*Zerai*—Admission subsequent to 2nd March, 1883.—The mere fact of certain land having been taken on lease as *zerai* by the defendant would not give to that fact any evidentiary value, when the letting was not—as s. 120, sub-s. (2), Bengal Tenancy Act, requires, to make it evidence—before the 2nd day of March, 1883. *SEE* BANADER SARK v. MACKENZIE (1902) . . . 7 C. W. N., 400

—s. 121—

See LIMITATION ACT, 1877, SCH. II, ART. 25 . . . 7 C. W. N., 728

—ss. 121, 122 and 140—

—Application for distraint permissible for arrears of rent and interest, but not for damages—Separate application for each holding—Wrongful distraint—Compensation—Penalty—

BENGAL TENANCY ACT (VIII OF 1885)—continued.

—ss. 121, 122 and 140—concluded.

Bengal Tenancy Act should be computed, discussed. *SHROBHAT SINGH v. NAWRANGDEO NARAIN SINGH* (1901) . . . I. L. R., 28 Calc., 364

—s. 140—

See LIMITATION ACT, 1877, SCH. II, ART. 25 . . . 7 C. W. N., 728

—s. 143—

See ante, ss. 101 to 108.

[I. L. R., 30 Calc., 339]

—s. 144—

See RENT, SUIT FOR—BY WHAT COURT TRIABLE . I. L. R., 30 Calc., 453

—s. 148—

1.—cl. (b)—Identification of the land in suit—Description.—Case where it was held that the description of a tenure, given in a plaint in a suit for rent, was *prima facie* sufficient for identification, and that the plaint ought not to have been rejected in a summary way. *DUGGA CHURN LAL v. KALA CHAND BISWAS* (1903) . . . 7 C. W. N., 615

2.—Rent suit, issue in—Plaint, whether to contain extent and boundaries of the lands.—In a suit for recovery of rent, where the allegation was that the defendant held a tenure consisting of 61 odd bighas of land within certain

Apparatus must contain the suit without describing

to make the plaintiff and defendant of the land in

the plaintiff and defendant of the land in

(1900) . . . 5 C. W. N., 121

3.—cl. (b)—Decree for rent obtained by a landlord who ceases to have interest in the land—Execution of decree—Assignment—Construction—Strict interpretation.—A decree obtained in a suit for rent, brought by a landlord who ceases to have the suit, s. 148, apply to decree is

BENGAL TENANCY ACT (VIII OF 1885)—continued.

—s. 148—concluded.

—s. 150—

—Rent, suit for—Money admitted to be due to landlord—Burden of proof—Plea of "confession and avoidance"—Rate of rent.—S. 150 of the Bengal Tenancy Act is limited in its operation to those cases in which the plea of the tenant is one in respect of which the burden of proof lies upon him;

—s. 153—

See APPEAL—ACTS—BENGAL TENANCY ACT, s. 153 . . . 7 C. W. N., 908

See SPECIAL OR SECOND APPEAL.
(5 C. W. N., 515
I. L. R., 28 Calc., 118

—s. 155—

—Notice—Ejectment, suit for—Alternative relief—Limitation.—A suit for the ejectment of a tenant for misuse of the land was dismissed by the Court below on the ground that the notice served on the tenant under s. 155 of the Bengal Tenancy Act was bad, as the compensation claimed in the notice for the misuse was demanded in the alternative. Held that the notice was not bad in law merely because the compensation was demanded in the alternative. *Pershad Singh v. Ram Pratap Roy* (1894), I. L. R., 22 Calc., 77, distinguished. *BOIDYA NATH PANDAY v. GHOSH MANDAL* (1902)

(I. L. R., 30 Calc., 1063

—s. 158—

See ante, ss. 201 to 203.

(I. L. R., 30 Calc., 339

—Bengal Tenancy Act (VIII of 1885), ss. 52, 154, cl. (d).—Jurisdiction—Additional rent for additional land, whether it can be determined.—Under s. 158, cl. (d), of the Bengal Tenancy Act, a Court has to determine what the existing rent is, and it has no jurisdiction to determine what the rent should be; and consequently additional rent for additional area cannot be assessed in such a proceeding. *NARAIN THAKUR v. LUCHMESHWAR SINGH* (1901)

(I. L. R., 30 Calc., 592

—ss. 160 (g), 163—

See SALE FOR ARREARS OF RENT—EFFECT OF SALE . . . I. L. R., 29 Calc., 813

—s. 167—

See LIMITATION ACT, 1877, s. 7.
(I. L. R., 29 Calc., 813

See MESNE PROFITS—MODE OF ASSESSMENT AND CALCULATION
(I. L. R., 30 Calc., 536

BENGAL TENANCY ACT (VIII OF 1885)—continued.

—s. 167—concluded.

See SALE FOR ARREARS OF RENT—INCUMBRANCES;

(I. L. R., 28 Calc.,
86, 180, 205;
E. C. W. N., 272

EFFECT OF SALE.

(I. L. R., 29 Calc., 813

—s. 169—

—Sub-s. (1), cl. (c).—"Date of sale," meaning of.—The words "date of sale," in s. 169, sub-s. (1), cl. (c), of the Bengal Tenancy Act, mean the date of confirmation of sale, and not the actual date of sale. *MATANGINI CHAUDHURANI v. SREERATH DAS* (1903) . . . 7 C. W. N., 552

—s. 170—

—Civil Procedure Code, s. 278—Whether claim maintainable, to a tenure or holding attached in execution of a decree for arrears of rent.—Held by the Full Bench (*BANERJEE, J.*, dissenting) that s. 170 of the Bengal Tenancy Act (VIII of 1885) bars a claim, under s. 278 of the Civil Procedure Code, to a tenure or holding attached in

See ante ante ante ante ante ante
s.c., 5 C. W. N., 474

—s. 178 (h)—

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.

(I. L. R., 28 Calc., 227
" 29 Calc., 674

—s. 179—

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.

(I. L. R., 29 Calc., 674

—s. 181—

See WHATWALL TENURE

(6 C. W. N., 94

—s. 184, and Sch. III, Art. 3—

—Limitation Act (XV of 1877), Sch. II, Art. 47.—Attachment under s. 136 of the Criminal Procedure Code—Appellate Court, power of, to take

barred by limitation under Art. 3, Sch. III of the Bengal Tenancy Act; and, the limitation having already commenced to run from the 9th February, 1895, i.e., from the date of the actual dispossession, the plaintiff could not have a fresh start of limitation from the date of the subsequent attachment by the Criminal Court. *Held*, further, that the lower

BENGAL TENANCY ACT (VIII OF 1885)—continued.

—s. 184, and Sch. III, Art. 3—concluded.

Appellate Court was empowered to take cognizance of the question of limitation under s. 4 of the Limitation Act and s. 184 of the Bengal Tenancy Act, although it had not been raised as a defence in the Court of first instance, if upon the proceedings in the case it was clear that the suit was barred by limitation. *DEO NARAIN CHOWDHURY v. WEBB* (1900)

[I. L. R., 28 Cal., 86;
s.c., 5 C. W. N., 160]

—s. 188—

See ante, ss. 65 AND 188.

See ante, ss. 90, 52, 188.

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—KABULIYAT.

[7 C. W. N., 670]

1.—*See* s. 65, 188—Money decree—Suit for rent for four years—Plaintiffs constituting the entire body of landlords for two years—Whether decree may

Act, but only a money decree under the ordinary law. *Beni Madhub Roy v. Joad Ali Sarkar*

2.—Co-sharers, suit by—Civil Procedure Code, s. 53.—A suit by a co-sharer landlord for his proportionate share of the rent cannot be maintained

sions under s. 53 of the Civil Procedure Code. *LALA RAM SARAN LAL v. NEM NARAIN SINGH* (1902)

[6 C. W. N., 326]

3.—Bengal Tenancy Act, s. 106—Joint landlords—"Anything which the landlord is under this Act required or authorized to do."—One of

authorized to do," is used in s. 188. *SHEER RAMA-DUR SARK v. MACKENZIE* (1902)

[7 C. W. N., 400]

BENGAL TENANCY ACT (VIII OF 1885)—continued.

—s. 189—

See ante, ss. 101 to 103.

[I. L. R., 30 Cal., 339]

—rules made under—

See RULES MADE UNDER ACTS—BENGAL TENANCY ACT.

[I. L. R., 28 Cal., 590]

—Sch. III—

1.—Art. 2, cl. (a)—Bengal Tenancy Act (VIII of 1885), s. 61, and Sch. III, Art. 2 (a)—Deposit of rent—Notice of deposit on one of several joint landlords, effect of—Limitation.—Service of notice, on one of the landlords, of the deposit of rent under s. 61 of the Bengal Tenancy Act (VIII of 1885) has not the effect of reducing the period of limitation to six months as provided in Art. 2 (a) of Sch. III to

2.—Art. 3—Limitation—Dispossession by a co-

years' rule *SARAFUDDIN MONDUL v. CHANDRA MANI GUPTA* (1900)

5 C. W. N., 405

3.—Dispossession by a landlord not acting as such—Suit by occupancy raiyat—Limitation.—Art. 3 of Sch. III to the Bengal Tenancy

4.—Limitation—Suit by an occupancy raiyat where the landlord has no hand in the gutter.—When an occupancy raiyat is dispossessed, and the landlord has had no hand in the ouster, the period of limitation applicable is twelve years, and not two years under Art. 3, Sch. III, to the Bengal Tenancy Act. The case of *Hara Kumar Nath v.*

BENGAL TENANCY ACT (VIII OF 1885)—concluded.

—Sch. III—concluded.

5.—Art. 3.—Dispossession by a fractional co-sharer landlord—Occupancy raiyat, suit for recovery of possession by—Limitation.—The special limitation of two years provided by Art 3 of Sch. III to the Bengal Tenancy Act is restricted to suits between persons occupying the position of landlord and tenant, for it is in regard to such relations that the Act has been designed. It is of no consequence whether the ejectment is by some co-sharers or by the entire body of landlords. *ANNADA SUNDARI CHANDALINI v. KRETHAN CHANGA* (1903)

[7 C. W. N., 542]

—Art. 6—

See LIMITATION ACT, 1877, SCH. II, ART. 179.—LAW APPLICABLE TO APPLICATION FOR EXECUTION.

[I. L. R., 29 Calc., 54]

6. —Decree for rent by a co-sharer landlord for a sum not exceeding Rs500 in value—Application for execution—Limitation Act (XV of 1877). Sch. II, Art. 179.—An application for execution of a decree, for a sum not exceeding Rs500 in value, obtained by one of two or more

BEQUEST—concluded.

—to idol—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—REQUEST TO IDOL.

—to stranger—

See MANOMEDAN LAW—WILL.

[I. L. R., 26 Bom., 497]

—to widow—

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . . . [5 C. W. N., 300.]

BIGAMY.

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES.

[I. L. R., 25 All., 182, 209.]

—Indian Penal Code (Act XLV of 1860), ss. 109, 494.—Marriage of a Hindu girl given a second

BILL OF EXCHANGE.

See INTEREST—MISCELLANEOUS CASES—BILL OF EXCHANGE.

[I. L. R., 30 Calc., 446]

See LETTER OF CREDIT

[I. L. R., 26 Bom., 708]

BILL OF LADING.

Jeddah The bill of lading stated that the goods were shipped subject to the condition that any claim for short delivery, etc., should be made in writing in Bombay within two months of date of steamer's

BEQUEST.

See CHARITABLE BEQUEST

See WILL—CONSTRUCTION.

[I. L. R., 26 Mad., 433]

—of self-acquired property—

See HINDU LAW—ALIENATION—ALIENATION BY FATHER.

[I. L. R., 24 Mad., 429]

—to a class—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—VESTED AND CONTINGENT INTERESTS . . . [I. L. R., 29 Calc., 689]

—to "eldest son to be born"—

See WILL—CONSTRUCTION

[5 C. W. N., 729]

—to heir—

See MANOMEDAN LAW—INHERITANCE.

[I. L. R., 30 Calc., 683]

BILL OF LADING—continued.

settled. This letter was given to the plaintiff, to be presented by him. Nothing was, however, gained

On the 28th January, 1902, the plaintiff filed this

contended that the defendants, by granting the shortage certificate, and by their letters of the 15th July and 20th December, had waived their rights under the

2.—Sea-insurance—Stamp duty—Stamp Act (II of 1899), ss. 2 and 7, and Sch. I, Art. 47A—“Contract for sea-insurance”—“Policy of sea-insurance.”

to When by such a document a company, for an increased payment, takes upon itself all risks attending goods while on board a ship or vessel, the document is not a “policy of sea-insurance,” but only a “contract for sea-insurance,” and is therefore not liable to be stamped as a “policy of sea insurance” under the Act IN THE MATTER OF

BILL OF LADING—concluded.

A REFERENCE UNDER THE INDIAN STAMP ACT, 1899 (1903) . I. L. R., 30 Calc., 565

BLANK PAPER.

—signature on—

See DEED—EXECUTION.

[8 C. W. N., 329

BOARD OF EXAMINERS.

of different members. IN THE MATTER OF BUDRA NARAIN ROY (1901) . I. L. R., 28 Calc., 479

BOARD OF REVENUE.

—rules of—

See BENGAL CESS ACT (BEN. ACT IX OF 1880) . I. L. R., 28 Calc., 637

BOMBAY ABKARI ACT (BOM. ACT V OF 1878).

—ss. 3 (9) and 62—Medicated article—Intoxicating drug—Cocaine.—The term “medicated article,” as used in s. 3 of the Bombay Abkari Act (Bom. Act V of 1878), applies to something which is imbued

fore does

ss. The

cl. (9),

BOMBAY ACT.

—1863—VI—

See HACKNEY CARRIAGE ACT.

—1873—VI—

See BOMBAY DISTRICT MUNICIPAL ACT.

—1874—III—

See HEREDITARY OFFICES ACT.

—1876—II—

See LAND-REVENUE.

[I. L. R., 25 Bom., 714, 752

BOMBAY ACT—concluded.

—1878—III—

See **MAKHLADARS' COURTS ACT.**

—1878—V—

See **BOMBAY ADKANI ACT.**

—1879—V—

See **BOMBAY LAND-REVENUE CODE.**

—1880—I—

See **KHOJA SETTLEMENT ACT.**

—1884—II—

See **BOMBAY DISTRICT MUNICIPAL ACT.**

—1887—IV—

See **GAMBLING—****BOM. ACT IV OF 1907;****[L. L. R., 28 Bom., 533]****BOM. ACT IV OF 1887, s. 8.****[L. L. R., 28 Bom., 541]**

—1888—III—

See **BOMBAY CITY MUNICIPAL ACT.**

—VI—

See **GUJARAT TALUKDARS ACT.**

—1898—IV—

See **BOMBAY CITY IMPROVEMENT ACT**

—1901—III—

See **BOMBAY DISTRICT MUNICIPAL ACT.****BOMBAY CITY IMPROVEMENT ACT
(BOM. ACT IV OF 1898).**

—Jurisdiction—Legislative powers of Governor of Bombay in Council—Jurisdiction of High Court to consider whether Act is ultra vires—Subordinate Legislature—Creation of new Courts—Land Acquisition Act of 1901, Section 10, s. 24, 1900

**BOMBAY CITY IMPROVEMENT ACT
(BOM. ACT IV OF 1898)—continued.**

Collectors, having made an award of the compensation to be allowed, gave notice to the plaintiffs to hand over possession. The plaintiffs thereupon

BOMBAY CITY IMPROVEMENT ACT
(BOM. ACT IV OF 1888)—*concluded.*

payable; (4) and that, applying the principle of the

given. **HARI PANDURANG v. SECRETARY OF STATE**
FOR INDIA IN COUNCIL (1903)

[I. L. R., 27 Bom., 424]

BOMBAY CITY LAND-REVENUE ACT
(BOM. ACT II OF 1878).

—ss. 8, II—

See **LAND-REVENUE.**

[I. L. R., 26 Bom., 339]

BOMBAY CITY MUNICIPAL ACT
(BOM. ACT III OF 1888).

—s. 195—

See *post*, s. 527 AND s. 195.

—s. 297—*Municipality—Provision to make*

JAMAL v. MUNICIPAL COMMISSIONER OF BOMBAY
(1900). [I. L. R., 25 Bom., 107]

—s. 527 and s. 195—*Notice of suit, when necessary—Refund of town duties—Limitation—*

BOMBAY CITY MUNICIPAL ACT
(BOM. ACT III OF 1888)—*concluded.*

brought in pursuance of II was not filed until the

defendant could not claim that his conduct had any relation to the execution of the Act if he knowingly and intentionally acted in contravention of its provisions: here the amount payable by way of refund was ascertained, and the plaintiff's right to recover it was admitted, and the refusal to refund was a deliberate and conscious contravention of the provisions of the Act: in such a case it could not be held that the money was *bona fide* withheld in execution of the Act, and, that being so, the defendant was not entitled to notice under s. 527; (2) that the suit was therefore not one of the class referred to in Art. 2, Sch. II, to the Limitation Act (XV of 1877), and was not barred: when it is provided in an Act that notice shall be given to the defendant of any suit intended to be brought in respect of an act done in pursuance or execution or intended execution of the Act or in respect of neglect or default in its execution, such provision does not apply when the action is brought on a contract, for the conduct giving rise to the action is a wrongful act or omission under the contract, as distinct from one in the execution of the Act. **RANOBORDAS MOCHWARI v. MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY** (1901)

[I. L. R., 25 Bom., 387]

BOMBAY DISTRICT MUNICIPAL ACT
(BOM. ACT VI OF 1878).

—ss. 17, 48 and 64—*Public street—Street lighted and swept by Municipality.—The mere*

—ss. 33 and 42—*Municipality—Private street—Balcony projecting over private street—*

—s. 48—

See *ante*, ss. 17, 48 AND 64.

—s. 64—

See *ante*, ss. 17, 48 AND 64

Notice of the suit was therefore given, but the suit

BONA FIDES.

See BENGAL PRIVATE FISHERIES PROTECTION ACT . . . 6 C. W. N., 118

See EXECUTION OF DECREE—MODE OF EXECUTION—INSTRUMENTS.

[I. L. R., 24 All., 85

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

[6 C. W. N., 886

7 C. W. N., 117

See PARTIES—SUBSTITUTION OF PARTIES—DEFTENDANTS . . . 7 C. W. N., 529

—bonâ fide claim of right—

See MISCHIEF . . . 7 C. W. N., 859

—test of—

See TRANSFER OF PROPERTY ACT, s. 53.
[I. L. R., 27 Bom., 323

BOND.

See FORGERY . . . 5 C. W. N., 897

See GUARANTEE I. L. R., 28 Calc., 597

See INTEREST—

STIPULATIONS AMOUNTING OR NOT TO PENALTIES;

MISCELLANEOUS CASES—BOND.

[I. L. R., 25 All., 284

See LIMITATION ACT, 1877, SCH. II, ART. 91 . . . I. L. R., 27 Bom., 580

See SECURITY FOR GOOD BEHAVIOUR
[I. L. R., 29 Calc., 455

—alteration of—

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY PARTY.

[I. L. R., 25 All., 580

—bail bond—

See RECOGNIZANCE TO APPEAR.

[I. L. R., 30 Calc., 107

—Suit for contribution by debtor who has paid money due under a bond against heir of co-obligor of bond—Limitation—Act XV of 1877 (Indian Limitation Act), s. 8—Minority—Nature of the rights of co-obligees discussed—In the case of co-obligees of a money bond, in the absence of anything to the contrary, the presumption of law is that they are entitled to the debt in equal shares as tenants in common. *Steeds v. Steeds*, 23 Q. B. D., 537, referred to. Hence, where one of two co-obligees is a minor, limitation will run as against the other co-obligee, who is not a minor, in respect of that portion of the debt to which he is entitled; and s. 8 of the Indian Limitation Act, 1877, will not apply. *MANZUR ALI v. MAHMUD-UN-NISSA* (1902) [I. L. R., 25 All., 165

BOOK.

See EVIDENCE—ACCOUNTS AND ACCOUNT BOOKS.

BOOK—concluded.

See TRADE MARK.

[I. L. R., 26 Bom., 289

BOUNDARIES.

—confusion of—

See LANDLORD AND TENANT—OBLIGATION OF TENANT TO KEEP HOLDING DISTINCT.
[5 C. W. N., 848

—description of, in plaint—

See BENGAL TENANCY ACT, s. 148, cl. (5).
[5 C. W. N., 121
7 C. W. N., 615

—dispute as to—

See BOMBAY LAND-REVENUE CODE, ss. 119, 120, 121 . . . I. L. R., 25 Bom., 312

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, ETC.

[6 C. W. N., 161

BRAHMO SAMAJ.

See HINDU LAW—ADOPTION—EVIDENCE OF ADOPTION . . . I. L. R., 30 Calc., 899

See PROBATE AND ADMINISTRATION ACT (V of 1881) . . . 7 C. W. N., 895

BREACH OF CONDITION.

See LANDLORD AND TENANT—FORFEITURE —BREACH OF CONDITIONS.

[I. L. R., 25 Bom., 32

BREACH OF CONTRACT.

See ACT—1850—XIII.

See CONTRACT—BREACH OF CONTRACT.

See DAMAGES—

MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT;

SUITS FOR DAMAGES—BREACH OF CONTRACT.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—BREACH OF CONTRACT.

See LIMITATION ACT, 1877, SCH. II, ART. 116

[I. L. R., 25 Mad., 50, 55, 587

See VENDOR AND PURCHASER—BREACH OF COVENANT . . . 7 C. W. N., 905

—by decree-holder—

See DECREE—CONSTRUCTION OF DECREE—CONSENT DECREE.

[I. L. R., 28 Calc., 567

BREACH OF COVENANT.

See VENDOR AND PURCHASER—BREACH OF COVENANT.

BREACH OF THE PEACE.

See RECOGNIZANCE TO KEEP PEACE.

—dispute likely to cause—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO.

—meaning of “offences involving a breach of the peace”—

See SECURITY FOR GOOD BEHAVIOUR.

[I. L. R., 30 Calc., 388]

BREACH OF PROMISE OF MARRIAGE.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—BREACH OF PROMISE OF MARRIAGE.

[I. L. R., 24 Mad., 652]

BREACH OF TRUST.

See CRIMINAL BREACH OF TRUST.

See EXECUTOR

[I. L. R., 28 Bom., 301]

BREACH OF WARRANTY.

See WARRANTY, BREACH OF.

BRIBE (OFFER OF) TO PUBLIC SERVANT.

See ACCOMPLICE

[I. L. R., 28 Bom., 193]

BROKER.

See PARTNERSHIP—

WHAT CONSTITUTES PARTNERSHIP;
[11 C. W. N., 429]

RIGHTS AND LIABILITIES OF PART-
NERS . . . 6 C. W. N., 429

See PRINCIPAL AND AGENT—LIABILITY
OF PRINCIPAL . . . 6 C. W. N., 429

—Contract—Principal and agent—Title—
Brokerage—A contracted with a broker to negotiate
for a loan of money on the first mortgage of properties,
and agreed to pay brokerage. The broker

BROTHER.

See

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MUNICIPAL ACT (BEN.

1899)—continued.

Act CORPORATION OF CALCUTTA
(UKRISHI (1903)

[7 C. W. N., 554]

BUILDING.

See

3 and 631—Sanction for erection
under misapprehension—Order
tion—Default Continuing offence—
sly fines, propriety of imposing—S.
Municipal Act is not a section which
for the punishment of offences commit-
section, viz., s. 449 of the Act. S. 580
offences, both the primary offence,
sult in carrying out an order under
secondary or continuing offence,
ch day thereafter by reason of the
the default. Where an order under
on the 8th September for demolishing
in three months, the primary offence
nce with that order was complete on
ber. After that, every day's default
the order became a distinct offence
Consequently, where summons was
the offender for such continuing
6th May following, on a complaint
10th March, the prosecution could
be brought by the Municipality under s. 631

See

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have been constructed in con-
visions of the Act. Nomi Lal
OF CALCUTTA (1903)

[7 C. W. N., 853]

—Mustard oil (as com-
to the prejudice of pur-
sale.—Where a Food
of mustard oil from
used, which, on analysis,
rated with fish oil, and the
s. 495 of Bengal Act III
ch adulterated oil being
own
prejudice of

BURNING-GROUND.

See MADRAS CITY MUNICIPAL ACT, 1834,
ss. 322, 433 AND 458.

[I. L. R., 25 Mad., 118]

BY-LAWS.

—must be reasonable—

See N. W. PROVINCES AND OUDH MUNICIPALITIES ACT (N. AND O. ACT I OF 1900),
§ 128 . . . I. L. R., 24 All., 439

—validity of—

See RAILWAY COMPANY.

[I. L. R., 22 All., 367]

CALCUTTA.

—application of common law of England in—

See SLANDER . I. L. R., 28 Calc., 452

CALCUTTA MUNICIPAL CONSOLIDATION ACT (BEN. ACT II OF 1888).

—s. 135—Bengal Act III of 1899, s. 152—
Calcutta Small Cause Court, jurisdiction of, to set
aside entire valuations—Valuations in force at the
commencement of Bengal Act III of 1899—Assess-
ments—Jurisdiction to declare void and set aside
still in f
fers—C
s. 622—I.

Commissioners made valuations of certain properties. On these valuations, assessments of rates were made for a period of six years expiring on various dates on or before the 31st March, 1900. On 1st April, 1900, Bengal Act III of 1899 came into force. Shortly before that date the Commissioners made new valuations. These valuations were made under Bengal Act II of 1888 which was then in force and were in conformity with the provisions of the Act. The Small Cause Court has jurisdiction to deal with the entire valuation and to set it aside, the only condition being that the procedure, as to the

CALCUTTA MUNICIPAL CONSOLIDATION ACT (BEN. ACT II OF 1888)—concluded.

filing of objections to the valuations, laid down by s. 135 of Bengal Act II of 1888 has been correctly followed. The procedure laid down by that section as to the form of the notice is directory only. The Small Cause Court having jurisdiction to deal with the matter, the High Court cannot interfere either under s. 622, Civil Procedure Code, or s. 15 of the Charter. The Small Cause Court had no jurisdiction to declare that the assessments under the previous valuations are still in operation and must remain in force for further periods of years. CORPORATION OF CALCUTTA v. COMRS (1901) . . . C. W. N., 480

—ss. 236, 241—

See CALCUTTA MUNICIPAL ACT, 1899—

ss. 391 AND 449; . . . 7 C. W. N., 874

s. 449 . . . 7 C. W. N., 554

—ss. 247, 250, 427—Building—Sanction—
Limitation—Damages.—A sanction to build, given by the Municipal Corporation of Calcutta under s. 247 of the Calcutta Municipal Consolidation Act (Ben Act II of 1888), is absolute, and when

pleaded in defence that the officer made a mistake, and that the sanction is not binding. The Corporation, after granting sanction under s. 247 of the Act, withdrew it on the ground that the plaintiff had not complied with what it believed to be his undertaking. Held that the withdrawal of the sanction was not done, nor did it purport to have been done, under the Act; and that, the suit for damages having

CALCUTTA MUNICIPAL ACT (BEN. ACT III OF 1899).

—ss. § (32), 320, 574—

See RECHIVER . I. L. R., 30 Calc., 721

—s. 152—

See CALCUTTA MUNICIPAL CONSOLIDATION ACT (BEN. ACT II OF 1888), s. 135.

[8 C. W. N., 480]

—s. 320.

See ADMINISTRATOR GENERAL.

[I. L. R., 30 Calc., 827]

—s. 383.

See post, s. 442 . . . 7 C. W. N., 564.

CALCUTTA MUNICIPAL ACT (BEN. ACT III OF 1899)—continued.

—ss. 391 and 449—*Application of, to buildings commenced before the Act, but completed after it came into operation—Bengal General Clauses Act (Ben. Act I of 1899), s. 8; saving effect of—Calcutta Municipal Consolidation Act (Ben. Act II of 1898), ss. 236, 241—Necessity of sanction to erect a detached building—Liability for building without such sanction.*—The Calcutta Municipal Act (Ben. Act III of 1899) relates only to acts done after the commencement of that Act, including acts done to complete a building commenced before the Act came into force. S. 449 (3) relates to things done in breach of s. 391, which itself does not relate to the alteration or addition to a building commenced before the Act came into operation. S. 8 of the Bengal General Clauses Act (Ben. Act I of 1899) saves the operation of a repealed Act in such a case, where the building was commenced when the old Act was in force. The words "material alteration of the structure of any house," in s. 236 of Ben. Act II of 1898, contemplated the erection of anything on a site attached to,

and that sanction was necessary under s. 236 of the latter Act, and the liability under s. 241 of that Act continued. But an order of demolition passed thereon under s. 449 (3) of Ben. Act III of 1899 was illegal. **KESHUB CHANDRA SEN v. CALCUTTA MUNICIPAL CORPORATION (1902)**

[7 C. W. N., 374]

—s. 449—*See* 449, 452, 579, 583, 449—*Calcutta Municipal Consolidation Act (Ben. Act II of 1898)—Sanction of building under old Act—Deviation from plan sanctioned under old Act—Liability of owner for building in contravention of rules laid down by the new Act—Penalty—Notice under s. 393 of new Act.*—If a building is constructed in deviation from its plan as sanctioned under the old Municipal Act of 1898, so as to render the owner liable to a penalty under the said Act, then he cannot show that he acquired under the old Act, before the new Act came into operation, a right entitling him to build in contravention of the provisions and rules laid down by the new Act, so as to bring himself within cl. (c) of s. 8 of Ben. Act I of

precedent to a proceeding under the first sub-section

CALCUTTA MUNICIPAL ACT (BEN. ACT III OF 1899)—continued.

of s. 449 of that Act. **CORPORATION OF CALCUTTA v. AMRITA LAL MUKERJEE (1903)**

[7 C. W. N., 554]

—ss. 449, 580 and 631—*Sanction for erection of house, given under misapprehension—Order directing demolition—Default Continuing offence.*

er under
offence,
of the
er under
s. 449 was made on the 8th September for demolishing a building within three months, the primary offence of non-compliance with that order was complete on

sanction so given would not exonerate the applicant from liability under the Act if the building be afterwards found to have been constructed in contravention of the provisions of the Act. **MOHTI LAL SEXT v. CORPORATION OF CALCUTTA (1903)**

[7 C. W. N., 553]

—s. 452—

See ante, s. 449.

—s. 495—*Adulteration—Mustard oil (as commercially known)—Sale to the prejudice of purchaser—Manufacture for sale.*—Where a food Inspector purchased samples of mustard oil from the manufactory of the accused, which, on analysis,

CALCUTTA MUNICIPAL ACT (BEN. ACT III OF 1899)—concluded.

W. N., 66, distinguished. MOTI LAL PAL v. CORPORATION OF CALCUTTA (1903)
[I. L. R., 30 Calc., 843; S.C., 7 C. W. N., 637]

—ss. 502, 505—*Human food, destruction of*

—s. 574—

See ADMINISTRATOR GENERAL.
[I. L. R., 30 Calc., 927]

—s. 579—

See ante, s. 449 . 7 C. W. N., 554

—ss. 580, 631—

See ante, ss. 449, 590 AND 631.

—Sch. XVII, rule 24—

Held that "an open square or the like," to come

CALCUTTA POLICE ACT (BEN. ACT IV OF 1886).

—s. 99 (1) and ss. 2, 9, 11, 78 and 77.

—*Limitation—Interpretation of Statutes—"Prosecution," meaning of—Inspector detaining persons in custody for police inquiry—Act done or intended to be done under the Act—Circular order issued by Commissioner authorising the Police to investigate, effect of—Practice—Objection to prosecution, on a question of law raised for the first time in appeal, given effect to.—The word "prosecution" in cl. (1) of s. 99 of the Calcutta Police Act means "criminal prosecution"; and the clause, so far as the rule of limitation goes, applies to criminal prosecutions as well as to civil action.*

a person in custody for the purpose of a police inquiry, and it was not shown that he did so in abuse of his authority and under colour of it for the purpose of harassing or injuring him: *Held* (1) that the circular order was one issued for the purpose of "rendering the police-force efficient in the discharge of all its duties," within the meaning of s. 9 of the Calcutta Police Act; (2) that the act of the Inspector detaining such person in custody

MITTER v. EMPEROR (1903) . 7 C. W. N., 883

CANAL.

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R., 28 Calc., 693

CANAL DUES.

—*recovery of—*

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS.
[I. L. R., 25 All., 527]

CANDIDATE.

—*for Pleadership or Mukhtarship—*

See BOARD OF EXAMINERS
[I. L. R., 28 Calc., 479]

CARRIAGE.

See HACKNEY CARRIAGE ACT.

CARRIERS.*See* BILL OF LADING.

[I. L. R., 26 Bom., 562]

See RAILWAY COMPANY.**CASTE.***See* JURISDICTION OF CIVIL COURT—
CASTE.*See* MISCRIFYER . I. L. R., 24 All., 155**—abandonment of—***See* MADRAS REGULATION, 1816, XI, s. 10.
[I. L. R., 24 Mad., 271]**—marriage between persons of different
castes—***See* HINDU LAW—MARRIAGE—VALIDITY
OR OTHERWISE OF MARRIAGE.
[7 C. W. N., 619]**CATTLE TRESPASS ACT (I OF 1871).**

—s. 22—*Illegal seizure of cattle—Fine on conviction, legality of—Imprisonment in default, if proper—Compensation.*—A magistrate is not competent, under s. 22 of the Cattle Tresspass Act, to pass a sentence of fine. He can only award compensation for an illegal seizure of cattle. An order of imprisonment in default of payment of such fine is also illegal. *BRAGIRATHI NAIK v. GANGADHUR MAHANT* (1900) . . . 5 C. W. N., 32

—s. 24—*Rescue of cattle after seizure for trespassing on public property—Conviction—Omission to record finding as to whether locality was public property—Legality of conviction—*Certain persons had been fined for rescuing cattle

CAUSE OF ACTION*See* APPEAL—ORDERS—ORDER REJECTING
A PLAINT . . . 5 C. W. N., 585*See* CO-SHAREK—SUITS BY CO-SHAREERS
WITH RESPECT TO THE JOINT PROPERTY.
[I. L. R., 28 Calc., 223]*See* DECLARATORY DECREE, SUIT FOR—
REMOVING ATTACHMENT
[I. L. R., 35 All., 347]*See* GUARANTEE.

[I. L. R., 28 Calc., 597]

See JOINDER OF CAUSES OF ACTION*See* JURISDICTION—CAUSES OF JURISDIC-
TION—CAUSE OF ACTION**CAUSE OF ACTION—concluded.***See* LETTERS PATENT, HIGH COURTS, 1865,
CL. 13 . . . I. L. R., 29 Calc., 315*See* LIMITATION ACT, 1877.

[I. L. R., 28 Calc., 37]

See MULTIPARTISNESS.

[I. L. R., 29 Calc., 257]

See PLAINT—FORM AND CONTENTS OF
PLAINT—CAUSE OF ACTION.

[8 C. W. N., 585]

See RELINQUISHMENT OF, OR OMISSION TO
SUE FOR, PORTION OF CLAIM.*See* RES JUDICATA—CAUSES OF ACTION.*See* RIGHT OF SUIT*See* SLANDER . I. L. R., 28 Calc., 452**—joinder of—***See* RENT, SUIT FOR . . . 5 C. W. N., 880**—misjoinder of—***See* DEBTOR AND CREDITOR

[I. L. R., 26 Bom., 577]

—splitting of—*See* CIVIL PROCEDURE CODE, s. 43

[I. L. R., 27 Bom., 379]

CAUSE PAPERS.**—lien on—***See* ATTORNEY AND CLIENT

[I. L. R., 29 Calc., 63]

CAVEAT*See* PROBATE—OPPOSITION TO, AND REVO-
CATION OF, GRANT.**CEREMONIES.***See* HINDU LAW—ADOPTION—WHO MAY OR MAY NOT
ADOPT,

[I. L. R., 18 Calc., 118]

MARRIAGE—CEREMONIES

—ceremonial competence—*See* HINDU LAW—ADOPTION—WHO MAY
OR MAY NOT ADOPT.

[I. L. R., 27 Bom., 492]

CERTIFICATE.*See* APPEAL TO PRIVY COUNCIL—PRACTICE
AND PROCEDURE—LEAVE TO APPEAL.

[5 C. W. N., 689]

CERTIFICATE—concluded.**—sale in execution of—**

See PUBLIC DEMANDS RECOVERY ACT
(SEN. ACT I OF 1895)
[I. L. R., 30 Calc., 618]

CERTIFICATE OF ADMINISTRATION.

See APPEAL—CERTIFICATE OF ADMINISTRATION.

[I. L. R., 25 Mad., 634]

—Act VII of 1889, s. 4, sub-s. (1), cl. (c)—
Suit upon an usufructuary mortgage by the heirs of the deceased mortgagor, whether maintainable without a succession certificate in a case where the mortgagor becomes entitled to a personal decree against the mortgagor on the happening of certain events.—In a suit by the heirs of a deceased mortgagor upon an usufructuary mortgage, by the terms of which the mortgagor was precluded from suing for the money, the Court of first instance gave a personal decree against the mortgagor by reason of the mortgage security having been impaired on the happening of subsequent events. The Lower Appellate Court reversed the decision of the first Court on the ground that, having

maintainable UMESH CHANDRA PRAMANICK v.
MORRUA MOHAN HAIDAB (1901)

[I. L. R., 28 Calc., 246;
S.C., 5 C. W. N., 607]

—Act VII of 1889—Right to sue without a

the mortgagor, the widow, their assignee and the purchaser of the equity of redemption, recover the

plaintiff was entitled to a decree for the land itself, and it was only by his consent that money was awarded in lieu of the land. The amount could not, therefore, rightly be treated as a debt, within the meaning of the Succession Certificate Act, and the failure of the plaintiff to produce a certificate was no bar to a decree being passed in his favour.
ARUNGUAM PILLAI v. VALERA KOUNDAN (1900)

[I. L. R., 24 Mad., 23]

CERTIFICATE OF PUBLIC DEMAND.

See BENGAL TENANCY ACT, s. 107.

[I. L. R., 28 Calc., 878]

See PENAL CODE, s. 208.

[I. L. R., 28 Calc., 217]

See PUBLIC DEMANDS RECOVERY ACT.

[3 C. W. N., 302]

CERTIFICATE OF SALE.

See DEED—CONSTRUCTION.

[I. R., 30 I. A., 71]

See SALE FOR ARREARS OF REVENUE—
SETTING ASIDE SALE—IRREGULARITY.

[I. L. R., 30 Calc., 1]

See SALE IN EXECUTION OF DECREE—
ERRORS IN DESCRIPTION OF PROPERTY
SOLD . . . I. L. R., 27 Bom., 334

—amendment of—

See APPEAL—EXECUTION OF DECREES—
QUESTIONS IN EXECUTION.

[I. L. R., 23 All., 476]

—The certificate of sale is not the title; it is merely the title-deed. NARAYAN BHAGWAN GANDHI
v. SHAMBAO LATUMAN (1903)

[I. L. R., 27 Bom., 379]

CESS.

See LAND-REVENUE.

[I. L. R., 28 Bom., 504]

See MADRAS LOCAL BOARDS ACT, ss. 57,
64, 149 . . . I. L. R., 24 Mad., 114

See NORTH-WESTERN PROVINCES LOCAL
RATES ACT . . . I. L. R., 23 All., 605

See ZAMINDARI DARS.

[I. L. R., 28 Calc., 293]

—illegal—

See ILLEGAL CESS.

See SALE IN EXECUTION OF DECREE—
SETTING ASIDE SALE—SUBSTANTIAL
INJURY . . . 7 C. W. N., 439

—liability to pay—

See BENGAL CESS ACT, ss. 34, 35, 36, 41.

[I. L. R., 28 Calc., 109]

1.—Bengal Tenancy Act, 1885, s. 74.—“All impositions upon tenants under the denomination of abwab,” etc., and “all stipulations and reservations for the payment of such,” referred to in s. 74 of the Bengal Tenancy Act, relate to both past and future stipulations; such stipulations made before the passing of the Bengal Tenancy Act are therefore void. JOTINDRA MOHAN TAGORE v. CHANDRA NATH SAHAI (1902) . . . 8 C. W. N., 380

2.—Res judicata.—Illegal cess not objected to in former suit for rent—Bengal Tenancy Act, 1885, s. 74.—Where, in a suit for rent, the rent

CESS—concluded.

in the subsequent suit. *Kamasa Monast v. Sarvas*
Sundari Dasi (1897), I L. R., 21 Calc., 711, followed.
Radha Prasad Singh v. Bal Kowar Koeri (1890),
 I. L. R., 17 Calc., 726, referred to. *Woomesh*
Chandra Maithra v. Barada Dass Maithra (1900)
 [I. L. R., 28 Calc., 17

CESS ACT.

See **BENGAL CESS ACT (BENGAL ACT IX**
OF 1880).

CHAMBERS.

See **RECEIVER** I. L. R., 28 Calc., 250

CHARACTER.

See **EVIDENCE—CRIMINAL CASES—CHA-**
RACTER.

CHARGE.

1. FORM OF CHARGE	Col.
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See **FALSE CHARGE.**

See **FALSE EVIDENCE—GENERAL CASES**
 [5 C. W. N., 615

See **JOINDER OF CHARGES.**

See **SALE FOR ARREARS OF RENT—IN-**
CUMBRANCES . 8 C. W. N., 834

See **TRANSFER OF PROPERTY ACT, s. 100**
 [I. L. R., 24 Mad., 397

—addition of—

See **ADULTERY** . I. L. R., 29 Calc., 415

—alteration of—

See **APPEAL IN CRIMINAL CASE—PRACTICE**
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—evidence to be taken after framing—

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 [7 C. W. N., 521

—form of—

See **DEFAMATION.**
 [I. L. R., 30 Calc., 402

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See **SESSIONS JUDGE—JURISDICTION OF—**
ORDER FOR RE-TRIAL ON APPEAL.
 [7 C. W. N., 301

—necessity for—

See **CRIMINAL PROCEEDINGS.**
 [I. L. R., 27 Bom., 394

—statutory—

See **VENDOR AND PURCHASER—VENDOR,**
RIGHTS AND LIABILITIES OF,
 [I. L. R., 30 I. A., 238

—subsequent proceedings where two distinct charges framed—

See **CRIMINAL PROCEDURE CODE, s. 254.**
 [7 C. W. N., 521

1. FORM OF CHARGE.

1.—**False evidence and perjury—Offences**
 committed by a person before the Court of Session—
 Commitment of such person by Court of Session for
 trial before itself—Proceedings to be drawn up on
 day of commitment—Charges of perjury and forgery
 —Specific statement as to such charges—Code
 of Criminal Procedure (Act V of 1898), ss. 195 and
 477—Penal Code (Act XLV of 1860), ss. 193, 468
 and 471.—If a Court of Session proceeds to take
 action under s. 477 of the Code of Criminal Procedure,

formulated in the shape of a charge, the Sessions

is arrested and committed to jail on charges under
 ss. 193, 468 and 471 of the Penal Code. The 25th of

CHARGE—concluded.**1. FORM OF CHARGE—concluded.**

particulars of the statements made and acts done by R upon which perjury and forgery were charged against him, and was not in any sense a charge or order of commitment, and was not warranted by law. *REILY v. KING-EMPEROR* (1901)

[I. L. R., 28 Calc., 434; ac 5 C. W. N., 609]

2.—Forgery—Charges, misjoinder of—Defective charge—Appeal—Trial by jury—Forgery—Using as genuine a forged document—Cheating—Criminal Procedure Code (Act V of 1898), s. 423—Penal Code (Act XLV of 1860), ss 467, 468, 471, 417, 511 and 109—Indian Registration Act (III of 1877), s. 82.—It was alleged by the

regard to the alleged forgery of the *kalala*; under s 82 of the Registration Act, and ss 467, 109 and 471 of the Penal Code with regard to the mortgage.

jury was defective, inasmuch as it did not show

investigated by a jury, the accused should be retried. *HIRENDRA LAL BHADURI v. EMPEROR* (1903)

[I. L. R., 30 Calc., 822; s.c., 7 C. W. N., 639]

2. ALTERATION OR AMENDMENT OF CHARGE

3.—Adding new charge at close of case for defence—Prejudice—A Sessions Judge is em-

ajournment, does not exercise such a sound and wise discretion. *KING-EMPEROR v. MATHURA THAKUR* (1901)

6 C. W. N., 72

CHARGE TO JURY.

Col

1. SUMMING UP IN GENERAL CASES	144
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—misdirection—

See CONFESSION—CONFESSIONS TO MAGISTRATE, I. L. R., 26 Mad., 88

1. SUMMING UP IN GENERAL CASES.

1.—Sessions Judge—Jury—Summing up—Defective direction—Contentions placed before the Jury—Judge should not omit pointedly to call attention of the jury to matters of prime importance, especially if they favour the accused—A

been discussed by the advocate. *EMPEROR v. MAL-GOWDA BASGOWDA* (1902)

[I. L. R., 27 Bom., 644]

2. MISDIRECTION.

2.—Acquittal—Verdict and order of acquittal—Appeal against acquittal.—In a charge, against an Inspector of Salt and Abkari, of extortion and bribery in a Court of Sessions.

to make the customary present of Rs100 or Rs50, according to the amount of salt to be weighed. The witness stated that he had refused to pay the bribe at that time but that on the following day

at the time, the accused agreed to send his peon (who was charged with abetment) for the peon came to the presence of the witness. The prosecution evidence, if true, only showed that these two other persons had witnessed the transactions without taking any part in it. The accountant and the other two persons were called and gave evidence, as second, third and fourth witnesses respectively, for the prosecution. Some

charge to the jury, warned them against accepting the evidence of accomplices without corroboration in

CHARGE TO JURY—continued

2 MISDIRECTION—continued.

material particulars. He said that the first and

was a misdirection. *EMPEROR v. SMITH* (1902)
[I. L. R., 28 Mad., 1

3.—Approver's evidence—Duty of Judge—
Corroboration—Retrial—Criminal Procedure
Code (Act V of 1898), ss. 297, 298 and 337.
—A Sessions Judge, in laying the evidence of
an approver before the jury, stated in his
charge: "If you think that the approver's story
is worthy of credit in itself, you have to consider
whether it has been corroborated on material points,"
and then, after describing what in his opinion were
"the points of corroboration," told the jury that

crime." Held that this was not a proper way to
place the case before the jury. The Sessions Judge
should have told the jury that, although the law
permitted them to convict on the uncorroborated

[I. L. R., 29 Calc., 782;
s.c., 8 C. W. N., 553

4.—Inadmissible evidence—Sessions
Judge—Inadmissible evidence—Criminal Pro-
cedure Code (Act V of 1898), ss. 418, 423
(2).—Where a charge to the jury by the Sessions
Judge is, upon the whole, favourable to the accused,
and most of the points of importance in favour of the

CHARGE TO JURY—continued.

2 MISDIRECTION—concluded.

sion of it, there is an error in law in the trial under
s. 418 of the Criminal Procedure Code (Act V

putting the jury in possession of the inadmissible
evidence, the Judge in his charge goes on also to point
out circumstances which would justify the jury in
disbelieving the wrongly admitted evidence, does not
make the misdirection less a misdirection. Where
evidence which the law says shall not be admitted is
let in with other evidence legally admissible, and

5.—Explanation of law—Duty of Judge to
explain law—Law explained in addresses by
pleaders on both sides to jury—Criminal Proce-
dure Code (Act V of 1898), ss. 297 and 298—Penal
Code (Act XLV of 1860), ss. 147, 149, 323, 325
and 304.—Where a Sessions Judge, in charging a
jury under s. 297 of the Code of Criminal Procedure
said: "The accused are charged with offences under
ss. 147, 323 with 149, 325 with 149, and 304 with
149. The law bearing on the case has been placed
before you more than once in the addresses delivered
by the learned pleaders on either side. I need not
go into detail as to the law, therefore." Held that it
was immaterial how much or how often the jury
may have been addressed by the pleaders on both
sides upon the law. The responsibility of laying
down
entirely
by
on
be

further that, although the common object of the
unlawful assembly was stated in the charge, the
Sessions Judge ought, in commenting upon the pro-
visions of s. 149 of the Penal Code, to draw the
attention of the jury expressly to the common
object. *MANGAL DAS v. EMPEROR* (1902)
[I. L. R., 29 Calc., 379; s.c., 8 C. W. N., 292

CHARGE TO JURY—concluded.**3. SPECIAL CASE.**

8.—Stolen property—Penal Code (Act XLV of 1860), ss. 395, 411—Charges of dacoity and receiving stolen property—Possession of stolen property—Misdirection.—On the trial of an accused, before a Judge and jury at a Court of Session, for dacoity and receiving stolen property, the Judge, in his charge to the jury, directed them that the fact of a stolen shirt having been found in possession of the accused two months after the dacoity was sufficient to justify them in convicting the accused of the dacoity. *Held*, on appeal, that this was a misdirection. Whether the possession of the stolen property was recent enough to warrant a conviction for the substantive offence was a matter entirely for the jury, and should not have been put to them in the positive way which the Judge adopted. *GUZZALA HANUMAN v EMPEROR* (1902)
[I. L. R., 26 Mad., 467]

CHARITABLE BEQUEST.

See WILL—CONSTRUCTION.

[6 C. W. N., 321
I. L. R., 26 Bom., 632
" 26 Mad., 632]

CHARITABLE TRUST.

See MAHOMEDAN LAW—ENDOWMENT.

CHARITIES.

See RIGHT OF SUIT—CHARITIES AND TRUSTS.

CHARTER ACT.

See HIGH COURTS' CHARTER ACT.

CHAUKIDAR.

See ESCAPE FROM CUSTODY.

[6 C. W. N., 337]

CHEATING.

See FORGERY . I. L. R., 25 Mad., 726

See FORM OF CHARGE—SPECIAL CASES—FORGERY . I. L. R., 30 Calc., 832

—*Indian Penal Code (Act XLV of 1860), s. 415—Including in a bill an article not supplied—Payment of the bill in part—Intention to defraud*—The fact that a trader, in a statement of his account, included, amongst other articles delivered, an article which the complainant alleged she had returned, does not amount to cheating unless it is proved that he had intentionally done so with an intention to defraud, and had obtained

CHEATING—concluded.

a payment of the whole bill or of the bill in part including the price of that article. *BAIR NATH RAM MARWARI v. BURGESS* (1900)
[5 C. W. N., 255]

CHEQUE.

—entry of, in pass-book—

See BANKER AND CUSTOMER.

[I. L. R., 25 Bom., 499]

CHIEF PRESIDENCY MAGISTRATE.

See DISCHARGE OF ACCUSED.

[7 C. W. N., 627]

CHILD.

—paternity of—

See EVIDENCE ACT, s. 112.

[I. L. R., 29 Calc., 111]

CHILDREN.

See ABANDONMENT OF CHILDREN.

See HINDU LAW—INHERITANCE—CHILDREN BY DIFFERENT WIVES.

See ILLEGITIMATE CHILDREN

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO . I. L. R., 26 All., 165

CHOSE IN ACTION.

See ASSIGNMENT OF CHOSE IN ACTION

See INSOLVENT DEBTORS ACT, s. 23.

[I. L. R., 26 Mad., 406]

CHOTA NAGPUR ENCUMBERED ESTATES ACT (VI OF 1878).

—s. 16—

See PARTIES—SUBSTITUTION OF PARTIES—PLAINTIFFS . I. L. R., 28 Calc., 171

CHOWKIDAR.

See CHAUKIDAR.

CHUDASAMA GAMETI GABASIAS.

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT ADOPT.

[I. L. R., 27 Bom., 492]

CITATION.

See PRACTICE—CIVIL CASES—PROBATE.

[I. L. R., 30 Calc., 528]

CIVIL COURT.

See JURISDICTION OF CIVIL COURT.

CIVIL COURT—concluded.

—duty of Magistrate to uphold decision of—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION . 7 C.W.N., 118

CIVIL PROCEDURE CODE.

—s. 2: "decree," definition of—

See APPEAL—

DECREE; I. L. R., 28 Calc., 81

ORDERS I. L. R., 24 All., 343

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[I. L. R., 29 Calc., 60

1.—An order determining any question referred to, in s. 24, Civil Procedure Code, is a decree under s. 12 of that Code. *KHRODA SUNDARI DESI v. JYAYENDRA NATH PAL CHAUDHURI* (1901)

[8 C. W. N., 283

2.—Civil Procedure Code (Act XIV of 1952), s. 2, 211—*Means profits—Future mesne profits.*—Held by the Full Bench (PRINSEP, J., dissenting) that an order dismissing, for default, an appeal from a decree is a 'decree' within the meaning of s. 2 of the Code of Civil Procedure. *Jagannath Singh v. Buddhan* (1895), I. L. R., 23 Calc., 115, and *Anwar Ali v. Jaffer Ali* (1896), I. L. R., 23 Calc., 827, overruled. *Ramchandra Pandurang Naik v. Madhao Purushottam Naik* (1891), I. L. R., 16 Bom., 23, referred to. *BADRA NATH SINGH v. CHANDI CHARAN SINGH* (1903) [I. L. R., 30 Calc., 680; s.c., 7 C. W. N., 486

—s. 2: "district," definition of (second part)—

See APPEAL—ORDERS.

[I. L. R., 23 All., 56

—s. 2: "foreign Court"—

See FOREIGN COURT, JUDGMENT OF.

[I. L. R., 29 Calc., 509

—s. 2: "public officer"—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY

[I. L. R., 25 Mad., 402

See PUBLIC OFFICER.

[I. L. R., 26 Bom., 809

—s. 11—

See BENGAL TENANCY ACT, ss 101 to 111A. [I. L. R., 28 Calc., 28

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL.

[I. L. R., 30 Calc., 369

See JURISDICTION OF CIVIL COURT—CASTE . I. L. R., 26 Bom., 174

See RIGHT OF SUIT.

CIVIL PROCEDURE CODE—continued.

—s. 12—

See BENGAL TENANCY ACT, ss. 101 to 111A. [I. L. R., 28 Calc., 28

See RENT, SUIT FOR . 7 C. W. N., 720

—s. 13—

See BENGAL TENANCY ACT, s. 51. [8 C. W. N., 589

See ESTOPPEL—ESTOPPEL BY JUDGMENT. [I. L. R., 28 Calc., 318

See RES JUDICATA.

See RIGHT OF SUIT—FRAUD. [I. L. R., 29 Calc., 395

—s. 13, Explanation VI—

See FOREIGN COURT, JUDGMENT OF. [I. L. R., 28 Calc., 641

—s. 15—

See RENT, SUIT FOR—BY WHAT COURT TRIABLE . I. L. R., 30 Calc., 458

—s. 16, 16A—

See LETTERS PATENT, HIGH COURTS, 1865, CL. 12 . I. L. R., 24 Mad., 293

—s. 17—

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL. [I. L. R., 30 Calc., 369

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—

BREACH OF CONTRACT; [7 C. W. N., 912

COMPROMISE; [I. L. R., 25 All., 48

PRINCIPAL AND AGENT. [I. L. R., 28 Mad., 544

See LETTERS PATENT, HIGH COURTS, 1865, CL. 12 . I. L. R., 24 Mad., 293

See RENT, SUIT FOR—BY WHAT COURT TRIABLE . I. L. R., 30 Calc., 458

See RIGHT OF SUIT—FRAUD. [7 C. W. N., 353

—s. 17, Explan. III—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—GENERAL CASES I. L. R., 25 Bom., 528

—s. 25—

See TRANSFER OF CIVIL CASE—GENERAL CASES.

[I. L. R., 24 All., 304, 356

" 25 All., 183

" 28 Mad., 585

CIVIL PROCEDURE CODE—continued.

—s. 26—

See MISJOINDER. [I. L. R., 26 Bom., 259
26 Mad., 647]

—s. 27—

See PARTNERSHIP—SUITS RESPECTING
PARTNERSHIPS. [I. L. R., 27 Bom., 157]
See TRADE MARK. [I. L. R., 25 Bom., 433]

—s. 28—

See MISJOINDER. [I. L. R., 26 Bom., 259]
See MULTIFARIOUSNESS [I. L. R., 29 Calc., 257]
See PLAINT—FORM AND CONTENTS OF
PLAINT—CAUSE OF ACTION. [8 C. W. N., 585]

—s. 30—

See PARTIES—SUITS BY SOME OF A CLASS
AS REPRESENTATIVES OF CLASS. [I. L. R., 25 Mad., 399]
See RIGHT TO USE OF WATER [I. L. R., 29 Calc., 100]

—misjoinder of causes of action—

See DEBTOR AND CREDITOR [I. L. R., 26 Bom., 577]

—s. 31—

See MISJOINDER [I. L. R., 24 All., 358]
See TRADE MARK. [I. L. R., 25 Bom., 433]

—s. 32—

See DIVORCE ACT (IV OF 1869), ss. 7, 11,
45. [I. L. R., 20 Calc., 469, 490n]
See LAND ACQUISITION ACT (I OF 1894),
ss. 30 AND 53. [I. L. R., 25 All., 133]
See PARTIES—
PARTIES TO SUITS—LEGACY, SUIT
FOR. [I. L. R., 26 Bom., 301]
SUBSTITUTION OF PARTIES—DE-
FENDANTS. [7 C. W. N., 529]
See TRADE MARK. [I. L. R., 25 Bom., 433]

—s. 33—

See LIMITATION ACT, 1877, s. 22. [8 C. W. N., 218]

—s. 34—

See PARTIES—PARTIES TO SUITS—
LEGACY, SUIT FOR [I. L. R., 26 Bom., 301]

CIVIL PROCEDURE CODE—continued.

—ss. 38, 37—

See LIMITATION ACT, 1877, SCH. II, ART.
179—NATURE OF APPLICATION—IRRE-
GULAR AND DEFECTIVE APPLICATIONS.
[I. L. R., 23 All., 499]

—s. 39—

See PLEADER—APPOINTMENT AND APPEAR-
ANCE. [5 C. W. N., 516]

—s. 40—

See COMMISSION—CIVIL CASES. [10 C. W. N., 927]

—s. 42—

See RES JUDICATA—MATTERS IN ISSUE
[I. L. R., 26 Mad., 760]

—s. 43—

See RELINQUISHMENT OF, OR OMISSION
TO SUE FOR, PORTION OF CLAIM.

See RES JUDICATA—MATTERS IN ISSUE.
[I. L. R., 26 Mad., 760]

See SPECIFIC RELIEF ACT, s. 9.
[I. L. R., 24 All., 501]

—Cause of action—Splitting of cause of
action—Suit to recover exclusive possession of
land—Suit to obtain a share by partition of
land—Certificate of sale relied upon in both suits
—The plaintiff, in execution of a decree obtained by
him, purchased at a Court-sale the right, title and
interest of his judgment-debtors, Rajaram and Sitaram,
in certain lands; and, on the 12th November,
1896, he obtained a sale certificate in respect of all
the properties so purchased. In 1891 he brought a
suit (No. 519 of 1891) against the heirs of Sitaram,
then deceased, for possession of certain of the lands
included in the sale certificate, of which they were in
exclusive possession, and he obtained a decree. In
1896 he brought another suit (No. 129

exclusive possession, and he again obtained a decree
in both the above suits he based his claim on the
sale certificate showing his title as purchaser. The

filed this suit to recover by partition the shares of
the heirs of Rajaram and of Sitaram in these lands,
basing his claim upon the sale certificate. The

terminating the case, that the suit was not barred by
s. 43. That section does not apply where the

CIVIL PROCEDURE CODE—continued.

—s. 43—concluded.

cause of action is different. The title on which the former suits were based was exclusive ownership, while that on which the present suit was based was joint ownership. A person who has succeeded in re-

—s. 44—

See JOINDER OF CAUSES OF ACTION.

[7 C. W. N., 353
I. L. R., 21 All., 358
" 25 All., 229]

—s. 45—

See MULTIPARTISNESS.

[I. L. R., 29 Calc., 257]

See RENT, SUIT FOR [5 C. W. N., 880]

—s. 48—

See LIMITATION ACT, 1877, s. 4.

[I. L. R., 27 Bom., 330]

—s. 50—

See PLAINT—

FORM AND CONTENTS OF PLAINT—
CAUSE OF ACTION;

[6 C. W. N., 585]

AMENDMENT OF PLAINT

[I. L. R., 30 Calc., 889]

—s. 53—

See APPELLATE COURT—

EXERCISE OF POWERS—SPECIAL
CASES—PLAINT, AMENDMENT OF,
[5 C. W. N., 273]

INTERFERENCE WITH, AND POWER
TO VARY, ORDER OF LOWER
COURT

[I. L. R., 30 Calc., 516]

See PLAINT—

AMENDMENT OF PLAINT;

REJECTION OF PLAINT.

—s. 54—

See post, s. 424. I. L. R., 25 All., 187

See LIMITATION ACT, 1877, s. 4

[I. L. R., 27 Bom., 330]

See PLAINT—REJECTION OF PLAINT

—s. 60—

See SUMMONS, SERVICE OF.

[I. L. R., 24 All., 302]

—s. 89—

See SUMMONS, SERVICE OF.

[I. L. R., 23 All., 89]

CIVIL PROCEDURE CODE—continued.

—s. 99—

—Practice—Costs—Appeal from order as to costs—Dismissal of suit for non-appearance—Restoration of suit to file an application of plaintiff—Order that plaintiff should pay the general costs of suit—A Judge, when restoring a suit to the file under s. 99 of the Civil Procedure Code (Act XIV of 1882), has no jurisdiction to pass at that time any order as to the general costs of the suit KRISHNA VITHAL POOLE v. GANESH BHASKAR TILAK (1901)

[I. L. R., 26 Bom., 201]

—s. 100—

—Service of summons on defendant residing out of British India—S. 100 of the Code of Civil Procedure is not limited in its application to defendants residing within British India. FAKIR-UD-DIN v. GHAFUR-UD-DIN (1900). I. L. R., 23 All., 99

—s. 101—

See post, s. 103. [5 C. W. N., 109]

—ss 103 and 108—

—Civil Procedure Code (Act XIV of 1882), ss 103, 108 and 553—Application to restore—Prevention by sufficient cause from appearing—Power of Court to restore where sufficient cause not shown—The affirmative provisions in ss 103, 108 and 553 of the Code of Civil Procedure, that a plaintiff or appellant (as the case may be) may prove that he was "prevented by sufficient

whereas in other cases the merits of the applicant's case will form an important element for consideration when the Court is asked to exercise its discretion. SOMAYYA v. SUBRAMA (1903)

[I. L. R., 29 Mad., 589]

—s. 104—

See APPEAL—EX-PARTE CASES.

[I. L. R., 23 All., 99]

—s. 108—

See ante, ss. 103 and 103.

See APPEAL—EX-PARTE CASES.

[5 C. W. N., 153]

I. L. R., 24 All., 302

" 25 All., 230

See RIGHT OF STIT—

DECRIES, I. L. R., 28 Calc., 475

FRAUD. I. L. R., 29 Calc., 395

L—Death of judgment-debtor—Application by judgment-debtor to have the ex-parte decree set

CIVIL PROCEDURE CODE—continued.

—s. 108—continued.

2.—Different defendants—*Ex parte* decree

defendant had executed a promissory note in plaintiff's favour. Plaintiff now sued first defendant on

against both. Later, the second defendant alone applied under a 108 of the Code of Civil Procedure that the *ex parte* decree might be set aside.

should be restored as against first defendant; what-

case like this, where the defence of the second defendant was peculiar to him. *Mahomed Hamidulla v. Tohurenissa Bibi*, I. L. R., 25 Cal., 155, commented on. *GOPALA CHETTI v. SCHUIER* (1903)

[I. L. R., 28 Mad., 604]

3.—Civil Procedure Code (Act XIV of 1892), s. 101—*Ex parte* decree, setting aside of, when divisible—Binding effect of such decree against two sets of defendants having a separate defence—Appeal.—When *ex parte* decree is divisible, it is, though in form a single decree, equivalent to two decrees, and when

reference to A was made. Both B and C were

against B and the other against A, and it remained a good and binding decree as against B; also that B was

CIVIL PROCEDURE CODE—continued.

—s. 108—continued.

no party to the re-hearing, and the first Court had no jurisdiction to retry the case as against him, and the appeal as against that decree to the lower Appellate Court was not competent. *MOHIM CHANDRA GUHA v. ANNADA CHARAN DUTT* (1901) . 8 C. W. N., 109

4.—Sufficient cause—Non-appearance of a guardian of a minor in a suit, whether a good and sufficient cause—*Ex parte* decree, setting aside of, against one of several defendants, effect of, as to the decree against other defendants.—The simple fact that a guardian did not appear in a suit is not a good and sufficient cause,

(1890), 6 C. L. R., 69, explained. In a case where an *ex parte* decree was set aside against one of the defendants, and the Subordinate Judge set aside the decree against others who did not appear and one of whom made an application to set aside the *ex parte* decree: Held that this was rightly done. *Mahomed Hamidulla v. Tohurenissa* (1897), I. L. R., 25 Cal., 155, approved of. *AJODHYA PERSHAD SINGH v. SHEO PERSHAD SAHU* (1900) . 5 C. W. N., 58

5.—Different judgment-debtors—Decree *ex*

parte—Decree set aside—

for an order absolute for sale, the Court, under these circumstances, directed that an order absolute under s. 89 of the Transfer of Property Act (IV of 1882) should issue, for the sale of all the mortgaged property,

SHAIKA HUSAIN v. HUB HUSAIN (1903)

[I. L. R., 25 All., 42]

6.—Minor defendant—Civil Procedure Code, ss. 108, 443—Guardian ad litem—Minor defendant not properly represented—*Ex parte* decree against minor—Application to set aside decree—How far the granting of such application should affect parties other than the applicant.—A suit claiming payment of money alleged by the plaintiffs to be due

CIVIL PROCEDURE CODE—continued.

—s. 108—continued.

on a balance of account was filed against three defendants, viz., Bhura Mal, Musammal Gayatri, the daughter-in-law, and Jamna Das, the son of Bhura Mal. The second and third defendants being minors, Bhura Mal was named as their guardian, and a notice was issued to him under Rule 128 of the Rules of Court, calling upon him to state whether he was willing to act as guardian *ad litem* to the minor defendants; Bhura Mal was also duly served with a summons in the suit. Bhura Mal entered no appearance, but the Court nevertheless, though no order had been made, set aside the decree *ad litem* suit and set aside all the proceedings on behalf of the minor defendants under s. 108 of the Code of Civil Procedure to set aside the decree.

though, where a decree passed against several defendants consists in reality of separate decrees against each, it may be that the decree can be set aside in

Civil Procedure primarily applies so far only as the particular defendant, who seeks to get an *ex parte* decree against him set aside, is concerned. *Huro*

CIVIL PROCEDURE CODE—continued.

—s. 108—concluded.

Ghose v. Greshchunder Bose (1863), 1 W. R., C. R., 223; *Brojanath Sarma Chuckerbutty v. Anund*

(1902) . . . I. L. R., 24 All., 383

—s. 111, III. (a)—

See SET-OFF—GENERALLY.

[I. L. R., 30 Calc., 1066]

—s. 120—

See PRACTICE—CIVIL CASES—NON-APPEARANCE OF PLAINTIFF.

[I. L. R., 28 Bom., 392]

—s. 130—

See PRACTICE—CIVIL CASES—INSPECTION AND PRODUCTION OF DOCUMENTS.

[I. L. R., 28 Calc., 424]

—ss. 141A, 142A—

See STAMP ACT (II OF 1899), SCH. I, ART 21 . . . I. L. R., 26 Bom., 523

—s. 146—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION

[7 C. W. N., 461]

—s. 153—

—Joint debtors—Suit against several joint debtors—Judgment against one joint debtor who admits claim does not bar suit against others—Contract Act (IX of 1872), s. 43—Partners—Practice—Procedure—In an action against two alleged partners, which came on as a short cause, one of the defendants admitted the claim, and judgment was therefore passed against him for the amount claimed. The second defendant denied his

action alleged in the plaint was joint; that it had become merged in the judgment recovered against the first defendant, and that further proceedings in the suit were therefore barred. A preliminary issue on this point was raised and argued. Held that the suit should proceed. In an action commenced against several joint debtors, judgment recovered against one of them who admits the claim does not bar the further prosecution of the suit against the others. *DICK = DRUMJI JAITHA* (1901)

[I. L. R., 25 Bom., 378]

—ss. 157, 158—

See APPEAL—DEFAULT IN APPEARANCE.

[I. L. R., 25 All., 194]

CIVIL PROCEDURE CODE—continued.

—s. 158—

necessary to the decision of the suit. If an order of this kind is not complied with, it is the duty of the Court to go on and decide the suit on such materials as it has before it. *SITARA BEGAM v. TULSHI SINGH* (1901). I. L. R., 23 All., 462

—s. 162—

See WITNESS—CIVIL CASES—SUMMONING AND ATTENDANCE OF WITNESSES
[I. L. R., 24 Mad., 200]

—s. 191—

See TRANSFER OF CIVIL CASE—GENERAL CASES. I. L. R., 26 Mad., 595

—s. 208—

See APPEAL—ORDERS
[I. L. R., 28 Calc., 177]
See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS. I. L. R., 30 Calc., 679
See DECREE—ALTERATION OR AMENDMENT OF DECREE.

[7 C. W. N., 880;
I. L. R., 24 Mad., 25, 646]

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[5 C. W. N., 192]

—s. 209—

See INTEREST—MISCELLANEOUS CASES—MORTGAGE. 6 C. W. N., 769

—s. 211—

See INTEREST—MISCELLANEOUS CASES—MONEY PROFITS.
[I. L. R., 30 Calc., 506]

See MONEY PROFITS—RIGHT TO, AND LIABILITY FOR;
[I. L. R., 24 All., 376]
ASSESSMENT IN EXECUTION, AND SUITS FOR MONEY PROFITS;
[6 C. W. N., 872]
MODE OF ASSESSMENT AND CALCULATION.
[6 C. W. N., 732
I. L. R., 23 All., 252]

See OATH OF PROOF—MONEY PROFITS
[5 C. W. N., 720]

—s. 220—

See COSTS—SPECIAL CASES—DIVORCE
[I. L. R., 28 Calc., 84]

CIVIL PROCEDURE CODE—continued.

—s. 223—

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION.

[5 C. W. N., 150
I. L. R., 28 Calc., 238
" 26 Mad., 258]

—s. 229A—

See TRIBUTARY MANAHS OF ORISSA
[6 C. W. N., 573]

—ss. 229A, 229B—

See EXECUTION OF DECREE—FOREIGN COURT. I. L. R., 28 Calc., 400

—s. 230—

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION, AND POWERS OF COURT. I. L. R., 25 All., 541

—Commencement of period of limitation under s. 230(a), Civil Procedure Code, for application to execute portion of decrees not appealed against.
—In the case of a decree for the payment of money or the delivery of property, the period of limitation for an application to execute a portion of the decrees which has not been appealed against runs, under s. 230(a) of the Code of Civil Procedure, from the date of the decree.

—s. 231—

See LIMITATION ACT, 1877, ss 7 AND 8, AND SCH II, ART. 179
[I. L. R., 25 Mad., 431]

—s. 232—

See LIMITATION ACT, 1877, SCH. II, ART. 180. 7 C. W. N., 793.
[I. L. R., 30 Calc., 879]

1.—Assignment of decrees—Order refusing to recognize transfers of decrees—Appeal.—An order passed under s. 232 of the Civil Procedure Code, refusing to recognize the transfers of a decree, is not subject to appeal.

v. CHIDAMBARAM ASARI (1901)
[I. L. R., 25 Mad., 383]

2.—Decree, transmission of—Execution—Assignees of Decree—Notice.—In an application, by an assignee of a decree, for transmission of the decrees and for notice to issue under s. 232 of Civil Procedure Code: Held that such application can only be treated as one for execution. *NANDU LAL v. CHATTERJEET SING* (1902). I. L. R., 29 Calc., 235

3.—Transfer of decrees for execution—Execution of decrees—Civil Procedure Code, ss. 232 and 235—Sale of decrees, and transfer for execution to another Court—Application by trans-

CIVIL PROCEDURE CODE—continued.**—s. 232—concluded.**

for fees for rateable distribution of assets—Court to which such application should be made.—A decree was transferred for execution from Mirzapur

appearance, and no objections were filed. As the

execution to that Court; and (5) that the order

—s. 233—

See SET-OFF—CROSS-DECREES.

[I. L. R., 26 Mad., 428

—s. 234—

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES

[6 C. W. N., 223

I. L. R., 26 Bom., 383

" 30 Calc., 961

See REPRESENTATIVE OF DECEASED PERSON . I. L. R., 30 Calc., 1044

—s. 244.

Col.

1. QUESTIONS IN EXECUTION OF DECREE

163

2. PARTIES TO SUIT

169

See ante, s. 233 . I. L. R., 25 Mad., 393

See APPEAL—

EXECUTION OF DECREES;

SALE IN EXECUTION OF DECREE

[I. L. R., 28 Calc., 73

See ASSIGNMENT OF CHOSE IN ACTION

[I. L. R., 26 Mad., 264

See BENGAL TENANCY ACT, s. 13.

[6 C. W. N., 190

7 C. W. N., 591

CIVIL PROCEDURE CODE—continued.**—s. 244—continued.**

See CLAIM TO ATTACHED PROPERTY.

[6 C. W. N., 63

See COMPROMISE—CONSTRUCTION, ETC., OF DEEDS OF COMPROMISE

[7 C. W. N., 158

See EXECUTION OF DECREE—

APPLICATION FOR EXECUTION, AND POWERS OF COURT;

[I. L. R., 25 Mad., 537

EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES;

[I. L. R., 29 Calc., 810

" 34 Mad., 285

EXECUTION BY AND AGAINST REPRESENTATIVES;

[6 C. W. N., 223

STAY OF EXECUTION.

[I. L. R., 28 Calc., 734

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

[6 C. W. N., 683

See MENS PROFITS—ASSESSMENT IN EXECUTION . 6 C. W. N., 672

[I. L. R., 29 Calc., 622

See MORTGAGE—FORECLOSURE—RIGHT TO FORECLOSURE

[I. L. R., 24 All., 179

See POSSESSION—SUITS FOR POSSESSION

[7 C. W. N., 807

See PUBLIC DEMANDS RECOVERY ACT (BENGAL ACT I OF 1895), ss 10, 17, 21.

[I. L. R., 28 Calc., 813

See RES JUDICATA—

ESTOPPEL BY JUDGMENT;

[I. L. R., 24 All., 44

ADJUDICATIONS.

[I. L. R., 25 Mad., 300

See RIGHT OF SUIT—DECREES

[5 C. W. N., 559

See SALE IN EXECUTION OF DECREE—

INVALID SALES—FRAUD;

[5 C. W. N., 265

SETTING ASIDE SALE—GENERAL CASES;

[I. L. R., 25 Bom., 631

SETTING ASIDE SALE—IRREGULARITY . I. L. R., 30 Calc., 142

See SPECIAL OR SECOND APPEAL.

[I. L. R., 28 Calc., 116

See TRANSFER OF PROPERTY ACT, ss 88 AND 89 . I. L. R., 25 Mad., 244

—parties to suit—

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW.

[I. L. R., 24 Mad., 683

CIVIL PROCEDURE CODE—continued.

—s. 244—continued.

—parties to suit—concluded.

See **INSOLVENT ACT** (11 AND 12 VIC., c. 21) . . . **I. L. R., 28 Calc., 419**See **SALE IN EXECUTION OF DECREE—**
SETTING ASIDE SALE—**GENERAL CASES; I. L. R., 29 Calc., 682****IRREGULARITY. I. L. R., 30 Calc., 142****1. QUESTIONS IN EXECUTION OF DECREE.**

1.—Application of section.—S. 224, Civil Procedure Code, does not apply to the case of execution of public demands
v. Mosahohali Janki Das v. N., 331, relied upon, RAMRUP SARAY v. KHUSHAL MISER (1902)
[8 C. W. N., 630]

2.—Adjustment of decree.—Adjustment of decrees, not out of Court, but by another decree superseding the earlier one, effect of.—If a decree is adjusted by compromise out of Court, the adjustment has to be notified to the Court; and, if it is not so notified, it would be ineffectual; but an adjustment of a decree, effected not out of Court

14 C. W. N., 44

3.—Compromise.—Sale in execution of decree.—Suit to set aside compromise and sale.—In execution of a money decree, the decree-holders attached and brought to sale the interest of their

CIVIL PROCEDURE CODE—continued.

—s. 244—continued.

1. QUESTIONS IN EXECUTION OF DECREE—continued.

a suit, in derogation of a decree which may be passed in future, cannot form the subject of an inquiry

tions under s. 244, cl. (c), relating to the execution of a decree and arising between the parties to a suit in which the decree was passed or their representatives, must be such as have reference to matters arising subsequent to the passing of the decree, and not antecedent to it. **CHHOTI NARAYN SINGH v. RAMKESHWAR KOER (1902)** **8 C. W. N., 798**

(1900) I. L. R., 28 Calc., 4; s.c. 5 C. W. N., 124**6.—Auction-purchaser.—When a**

an application to set aside a sale comes within the scope of s. 244, Civil Procedure Code, or not, the point to be considered is, whether there is a contest

dos, Annootinga v. Aravatra (1895), 1 L. R. 18 Mad., 436, and Nemai Chand Kanji v. Dero Nath Kanji (1898), 2 C. W. N., 691, referred to. ADHAR MARI DAS v. MONMOTHA NATH BOSE (1901) **6 C. W. N., 278**

7.—Fraud by decree-holder.—Confirmation of sale.—A judgment-debtor is entitled, by an application under s. 244, Civil

6.—of the Code of Civil Procedure. Proseman Coomar Sanyal v. Kasi Das Sanyal (1892), L. R., 19 I. A., 186, referred to. ADHAR SINGH v. SHRO PRASAD (1898) **I. L. R., 23 All., 209**

CIVIL PROCEDURE CODE—continued.

—s. 244—continued.

1. QUESTIONS IN EXECUTION OF DECREE—continued.

is a stranger to the suit. *Prossna Kumar Sanyal*
vs. The State of Bengal, 1909, 12 C.L.J. 209.

2.—Execution of decrees—Suit
 for cancellation on the ground of fraud in a
 sale held in execution of a decree—Proper remedy

9.—Improvements—Execution proceedings—
 Question raised as to whether improvements
 attached in execution were property of deceased
 judgment-debtor or of his representatives in their

10.—Leave to bid at sale—Civil Procedure
 Code, ss. 244, 245—Procedure—Suit to set
 aside sale in execution on the ground that the real
 purchasers were the decree-holders who had not
 obtained leave to bid—Proper remedy by applica-
 tion—The plaintiff sued to set aside a sale of certain
 property in execution of a decree against him, on

CIVIL PROCEDURE CODE—continued.

—s. 244—continued.

1. QUESTIONS IN EXECUTION OF DECREE—continued.

the grounds that the sale-proceedings had been
 secretly brought about without the knowledge of
 the plaintiff, and that the certified auction purcha-
 sers were benamidars for the decree-holders, who
 had not obtained permission to purchase. Held that,
 under the above circumstances, the plaintiff's remedy
 was not by suit, but by application under
 s. 244 and the last clause of s. 294 of the Code
 of Civil Procedure *Viraraghava Ayyangar v*
Venkatacharyar (1932), I L. R., 5 Mad. 217;

11.—Mistake—Civil Procedure Code (Act XIV

execution proceedings to be re-opened was maintain-
 able under s. 244, Civil Procedure Code, on the
 ground that the decree-holder had acted under a
 mistake of calculation in fixing the amount that
 was due *Fakruddin Mahomed Ahsan v. The*
Official Trustee of Bengal (1934), I. L. R., 10

CHATTERJI (1901)

12.—Mortgage—Purchase of mortgaged prop-
 erty by mortgagee—Application by purchaser to
 recover possession as against defendants who held
 possession under prior sale based on prior mort-
 gage—Question raised whether purchaser could
 recover possession without first paying to defendants
 amount of prior mortgage—“Execution and en-
 forcement of decrees”—Appral—A mortgagee
 obtained a decree directing the sale of property in the
 possession of certain defendants, subject to a prior
 charge thereon. At the sale in execution of that
 decree, the mortgagee purchased the property. He
 now sought to recover possession of it from the
 defendants, the question raised being whether,

CIVIL PROCEDURE CODE—continued.

—s. 244—continued.

1. QUESTIONS IN EXECUTION OF DECREE—continued.

under the terms of the decree, he was entitled to be put into possession without paying the amount of the prior charge, the defendants so dispossessed being at liberty to bring a separate suit to enforce the charge. Held that the question thus raised between the decree-holder (purchaser) and the defendants related, within the meaning of s. 244 (c) of the Civil Procedure Code, to the execution or enforcement of the decree against these defendants, and an appeal lay from an order passed thereon. *Per MOON, J.*—Even if the purchaser had not been also the decree-holder, he would have been a representative of a judgment-debtor. *Per BHASHYAM AYYANGAR, J.*—The order was not the less an order under s. 244, because it was also passed under ss. 318 and 334 of the Code. *KASINATHA AYYAR v. UTHUMANSA ROWTHAN (1901)*

[I. L. R., 25 Mad., 529]

of mortgaged property has been made, any question that arises afterwards as to that order absolute is not

14.—Civil Procedure Code (Act XIV of 1892), s. 214, 259—Decree—Order—Appeal—Mortgage decree, question regarding satisfaction of, when no application for execution pending.—Where a Court deals with a question relating to the discharge or satisfaction of a decree, it may be said to be executing the decree in the sense of s. 214, Civil Procedure Code, although no formal application for execution may have been made to it; and an order passed by the Court is a decree, and is appealable. *RAM KAMESHWARI PERSHAD SINGH v. SOHAN SINGH (1902)*

[7 C. W. N., 172]

15.—Parties—Execution of decree—Party to suit in which the decree was passed—Party against whom no decree was passed not precluded from bringing a suit.—S. 214 of the Code of Civil Procedure presupposes a decree enforceable by the decree-holder against the person between whom and the decree-holder the question referred to therein arises. It has no application to questions arising between the decree-holder and persons against whom there is no decree to be executed. Where therefore certain persons had intervened in a suit as defendants, and the suit was disposed of without any decision of the claim set up by them, and without any decree being passed affecting them, it was held that they (or their assignee) were not precluded from bringing a suit to have released from attachment the property claimed by them in the former suit, but as to their

CIVIL PROCEDURE CODE—continued.

—s. 244—continued.

1. QUESTIONS IN EXECUTION OF DECREE—continued.

title to which there had been no adjudication. *Chowdhry Wahed Ali v. Jumate (1872)*, 11 B. L. R., P. C., 149, followed. *Nagamuthu v. Savarimuthu (1891)*, I. L. R., 15 Mad., 226; *Gour Kishore Chowdhry v. Mahomed Hassim Chowdhry (1868)*, 10 W. R., C. R., 191; *Kameshwar Pershad v. Kun Bahadur Singh (1886)*, I. L. R., 12 Calc., 453; *Alashi-ullah v. Kifayat, Weekly Notes, 1893, 67*; *Jangi Nath v. Phundo (1888)*, I. L. R., 11 All., 74; and *Mukarab Hussain v. Hurmat-un-nissa (1901)*, I. L. R., 25 All., 20.

and *Gadicherla China Seetayya v. Gadicherla Seetayya (1897)*, I. L. R., 21 Mad., 45, referred to. *KALEA PRASAD v. BASANT RAM (1901)*

[I. L. R., 23 All., 348]

16.—Recovery of land—Proceedings taken by a purchaser under s. 318, relating to the discharge or satisfaction of decree—Subsequent pro-

application was rejected as being barred by limitation. He now brought the present suit to recover possession of the land from the present defendant.

17.—Recovery of money—Execution of decree—Question relating to the execution, discharge or satisfaction of the decree—Application

between the parties after the decree has been executed

CIVIL PROCEDURE CODE—continued.

—s. 244—continued.

1. QUESTIONS IN EXECUTION OF DECREE—concluded.*L. R., 7 All., 641, distinguished. COLLECTOR OF JALPAIGURI v. BITHAL DAS (1902)*[*I. L. R., 24 All., 291***18.** ————— *Execution of decree—Application to recover money realized in execution of a decree subsequently set aside.—In execution**holders**Rs. 1,300.**s. 103**decree set**aside.**side.*

remedy was that which he had sought, namely, by application in execution, and not by separate suit. *Dhan Kunwar v. Mahtab Singh (1899), I. L. R., 22 All., 78, followed. SARAN v. BHAGWAN (1903)*

[*I. L. R., 25 All., 441*

19.—Release of property—Malabar law—Suit against karnavan as manager of tarwad—Attachment of tarwad property under decree—Subsequent order of release—Suit to cancel order of release barred by s. 244 of Civil Procedure Code.—Plaintiff in a suit obtained a decree against the karnavan of defendants, as senior member and

2. PARTIES TO SUIT

20.—Defendants exempted from decree—Appeal—Civil Procedure Code (Act XIV of 1852), ss. 244, cl. (c), 278, 280, 283—Execution of decrees—Defendants exempted from decrees—Questions relating to execution, discharge or satisfaction of decrees—Claim or objection to attached property

21.—Party suit against whom was dismissed—Civil Procedure Code (Act XIV of 1852), ss. 244, 278, 280, 283—Parties—Party against whom a suit is dismissed preferring a

CIVIL PROCEDURE CODE—continued.

—s. 244—continued.

2 PARTIES TO SUIT—continued.

claim—Claim—Attachment—Right of suit.—When a suit is dismissed against one of the parties but decreed against the rest, that party cannot be regarded as a party to the suit in relation to the execution, discharge or satisfaction of the decree, within the meaning of s. 244, Civil Procedure Code. So when a party against whom a suit is dismissed prefers a claim to property which is attached by the decree-holder as being the property of the defendant against whom the suit has been decreed: *Held that ss. 278 and 280, and not s. 244, Civil Procedure Code, apply to the case. Pun- channun Bandopadhyay v. Kabir Bidi (1890), I. L. R., 17 Cal., 711, Ram Prasad Pandey v. Jagannath Ram Marwari (1901), 6 C. W. N., 10, Am- eshtwar Pershad v. Run Bahadur Singh (1866), I. L. R., 13 Cal., 458, Kalka Prasad v. Basant Ram (1901), I. L. R., 23 All., 846, referred to. KAHIMUDDIN SARKAR v. LALL MEAR (1902)*

[*6 C. W. N., 727*s.c., *I. L. R., 29 Cal., 696*

23.—Purchaser—Civil Procedure Code—ss. 244, 305—Execution of decrees—Representative of a party to the suit—Purchaser under a private sale sanctioned by the Court under s. 305—*Held* that a purchaser from a voluntary seller who has sold with the consent and authority of the Court under

23. ————— *Civil Procedure Code (Act XIV of 1852), ss. 244, 310A.—Purchaser of interest in a tenure from the judgment-debtor, whether a legal representative—Purchase prior to decree—Rent decree—When a person pur-*

24. ————— *Purchasers at a private sale, of interests of mortgagors—Locus standi of such purchasers to make application under s. 244—Representative of parties to suit—Annulment of possession—Confirmation of possession of such purchasers.—The purchasers at a private sale of the interests of the mortgagors, decree-holders in a suit brought to set aside the mort-*

CIVIL PROCEDURE CODE—continued.

—s. 244—continued.

2. PARTIES TO SUIT—continued.

Sarkar (1896), I. L. R., 24 Calc., 62, followed.
BASUDEB GIRI v. BROJO MOHAN JANA (1902)

[7 C. W. N., 54]

of a decree against the judgment-debtor and placed in charge of a Receiver appointed by the Court. While the attachment was pending, the judgment-debtor granted a lease of the property to M, who thereupon set up a right to hold possession of the property and to pay to the Receiver only the rent due from him under the lease. Held that M was a

Seems that the decree-holder was, in the circumstances, entitled to such a declaration.
MATHEWSON v. GODARDHAN TRIBEDI (1900)
[I. L. R., 28 Calc., 482; a.c., 5 C. W. N., 654]

26. — Addition by appellant of parties to record as representatives of deceased respondent—Dismissal of appeal—Application by some representatives in execution—Dispute

a decree in a suit, the respondent appeared, and while that appeal was pending plaintiff died.

Defendant thereupon brought an appeal on the re of

had been brought on the record by defendant, as representatives of plaintiff, made an application in execution, in which the other representatives, similarly brought on, were not joined, on the ground that they were not, in fact, representatives. Those other representatives, however, claimed to be entitled to join in the execution proceedings. The Munsif stayed the application under the last clause of s. 244 of the Code of Civil Procedure, and directed the parties to decide their rights by separate suit.

jurisdiction in execution to re-open the question as to whether certain persons brought on the record as representatives of the deceased plaintiff, and as such made respondents in the appeal, had been properly joined as parties or not. VENKATACHALA REDDI v. VENKATARAMA REDDI (1901)

[I. L. R., 24 Mad., 665]

CIVIL PROCEDURE CODE—continued.

—s. 244—concluded.

2. PARTIES TO SUIT—concluded.

27. — Determination of question whether party applying for execution is representative of decree-holder—Appeal.—The effect of the last clause of s. 244 of the Code of Civil Procedure is to give the right of appeal against an order determining whether a party applying for execution is or is not the representative of the decree-holder. KRISHNAMA CHARARI v. APPABANI MUDALIAR (1901) I. L. R., 25 Mad., 545

—s. 245—

See LIMITATION ACT, 1877, SCH. II, ART. 180 . . . I. L. R., 26 Mad., 101

—s. 246—

See SET-OFF—CROSS-DECREES.

[I. L. R., 24 All., 481
= 26 Mad., 428]

—s. 247—

See SALE IN EXECUTION OF DECREE—IMMOVABLE PROPERTY.

[5 C. W. N., 497]

—s. 248—

See LIMITATION ACT, 1877, SCH. II—

ART. 179—NOTICE OF EXECUTION;
[6 C. W. N., 656
I. L. R., 27 Bom., 822]

ART. 180. . . 7 C. W. N., 793
[I. L. R., 30 Calc., 799]

—s. 251—

See WARRANT OF ARREST—CIVIL CASES.

[6 C. W. N., 645]

—s. 252—

See REPRESENTATIVE OF DECEASED PERSON . . . I. L. R., 28 Mad., 792

—s. 257A—

1.—Agreement for satisfaction of judgment-debt—Agreement in satisfaction of judgment-debt, suit to enforce—Previous sanction of Court.—S. 257A, Civil Procedure Code, is a bar only to execution proceedings in respect of agreements therein mentioned, and does not prohibit their enforcement by separate suit. HURKISSAN DASS SEDOWOKE v. NIBARAN CHANDER BANERJEE (1901)

[8 C. W. N., 27]

2. — Execution of decree—Agreement which supersedes the operation of the decree, not within the terms of s. 257A.—Held that an agreement whereby a decree is adjusted, and so rendered unenforceable, is not within the purview of s. 257A of the Code of Civil Procedure. Ram Ghulam v. Janki Rai (1894), I. L. R., 7 All., 124; Jhadar Mahomed v. Moosa Sonahar (1895), I. L. R., 11 Calc., 671; Hukum Chand Orwal v. Taharunnessa Bibi (1892), I. L. R., 16 Calc., 504; Jaji Kamli v. Anai Bhatta (1893)

CIVIL PROCEDURE CODE—continued.**—s. 257A—continued.**

I. L. R., 17 *Mad.*, 392; *Takaram v. Anantbhat* (1900), *I. L. R.*, 25 *Bom.*, 252; *Venkata Subramania Ayyar v. Koran Kannan Ahmod* (1902), *I. L. R.*, 26 *Mad.*, 19; and *Herkissen Dass Serowgee v. Niharan Khander Banerjee* (1901), 6 *C. W. N.*, 27, referred to. *Heera Nema v. Pestonji Dastabhoj* (1899), *I. L. R.*, 22 *Bom.*, 693, and *Dhanram Ragha v. Ganpat Sadashiv* (1902), *I. L. R.*, 27 *Bom.*, 96, dissented from. *Dhan Bahadur Singh v. Asandi Prasad* (1896), *I. L. R.*, 19 *All.*, 435; and *Dala Malwahi v. Palakdhari Singh* (1896), *I. L. R.*, 19 *All.*, 479, distinguished. *LALI SINGH v. GATA SINGH* (v.s. 1903)

[*I. L. R.*, 25 *All.*, 317

3.—Agreement to give time—Decree—Mortgage—Amount of decree included in the mortgage—Satisfaction.—The agreement to which the first paragraph of s. 257A of the Civil Procedure Code (Act XIV of 1892) relates is one which suspends and does not destroy the rights of execution consequent on a decree. Where a mortgage-bond was

under the decree, being an agreement to give time for the satisfaction of a judgment-debt, and that in respect of that sum no suit would lie. *Held* that the suit was maintainable. The mortgage-bond did not suspend the right to execute the decree, but it put an end to the remedy on the decree and sub-

4. — Agreement to give time for the satisfaction of a judgment-debt.—The test as to whether s. 257A of the Code of Civil Procedure operates to render an agreement void is whether the parties agree that the judgment-debt, *qua* judgment-debt, shall be put an end to. If so, the section does not render the agreement void. If not, it does. After a decree had been passed in favour of a plaintiff in a suit, the defendant gave plaintiff a bond by which he undertook to pay

thereupon brought this suit on the bond to recover the balance which still remained unpaid, when it was pleaded in defence that the bond was void under s. 257A of the Code of Civil Procedure. *Held* that the effect of the bond was to keep alive the relation

CIVIL PROCEDURE CODE—continued.**—s. 257A—concluded.**

of judgment-creditor and judgment-debtor by the express agreement of the parties, the debt being enforceable as a judgment-debt. *Also*, that, on its true construction, the bond was an agreement to give

representative of one of the judgment-debtors) had not been one of the parties to the suit in which the decree was obtained. *Juji Kanti v. Anna Bhatta*, *I. L. R.*, 17 *Mad.*, 382, and *Hukum Chand Oswal v. Taharunnessa Bibi*, *I. L. R.*, 16 *Calc.*, 504, commented on. *VENKATA SUBRAMANIA AYYAR v. KORAN KANNAN AHMOD* (1902)

[*I. L. R.*, 26 *Mad.*, 19

5.—Unsanctioned mortgage—Decree—Satisfaction of decree by a mortgage without sanction of Court—Mortgage bond void.—The plaintiff was the holder of a decree against the defendant for Rs. 870. On the 28th November, 1895, the plaintiff advanced to the defendant Rs. 9, and, in consideration of this advance and of the amount already due by the defendant to the plaintiff under

—s. 258—

See ante, s. 244—**QUESTIONS IN EXECUTION OF DECREE.** 7 *C. W. N.*, 172

See **MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.**

[*I. L. R.*, 24 *Mad.*, 412

—s. 260—

See **EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.**

[*I. L. R.*, 26 *Bom.*, 293

—s. 268—

See **ATTACHMENT—SUBJECTS OF ATTACHMENT**

—s. 268—

See **ATTACHMENT—SUBJECTS OF ATTACHMENT**

DEBTS; *I. L. R.*, 26 *Bom.*, 305

SALARY. *I. L. R.*, 30 *Calc.*, 713

See **INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.**

[*I. L. R.*, 26 *Mad.*, 673

CIVIL PROCEDURE CODE—continued.

—s. 273—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—

DECREES:

[I. L. R., 27 Bom., 556
6 C. W. N., 5

MESNE PROFITS.

[I. L. R., 24 Mad., 341

—s. 274—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DEBTS

[I. L. R., 26 Bom., 305

—s. 276—

See ante, s. 244—PARTIES TO SUIT.

[I. L. R., 28 Calc., 492

See ATTACHMENT—ALIENATION DURING ATTACHMENT.

[I. L. R., 23 All., 114
„ 26 Bom., 497

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES

[6 C. W. N., 209

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE PROCEEDS.

[I. L. R., 25 All., 431

—s. 278—

See ante, s. 244—PARTIES TO SUIT.

[I. L. R., 30 Calc., 134

See BENGAL TENANCY ACT, s. 170.

[I. L. R., 28 Calc., 382

See CLAIM TO ATTACHED PROPERTY.

—s. 279—

See CLAIM TO ATTACHED PROPERTY.

[I. L. R., 25 Mad., 553

—s. 280—

See ante, s. 244—PARTIES TO SUIT.

[I. L. R., 30 Calc., 134

See CLAIM TO ATTACHED PROPERTY.

—s. 281—

See CLAIM TO ATTACHED PROPERTY.

[I. L. R., 24 Mad., 20

—s. 282—

See CLAIM TO ATTACHED PROPERTY.

[I. L. R., 25 Mad., 555

—s. 283—

See ante, s. 244—PARTIES TO SUIT.

[I. L. R., 30 Calc., 134

See CLAIM TO ATTACHED PROPERTY.

See LIT PENDENS. I. L. R., 23 All., 60

—s. 285—

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE PROCEEDS

[I. L. R., 29 Calc., 773

CIVIL PROCEDURE CODE—continued.

—s. 287—

See APPEAL—EXECUTION OF DECREES—QUESTIONS IN EXECUTION.

[I. L. R., 30 Calc., 817

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

[I. L. R., 30 Calc., 599

See SALE IN EXECUTION OF DECREE—IMMOVABLE PROPERTY;

[5 C. W. N., 497

SETTING ASIDE SALE—IRREGULARITY.

[6 C. W. N., 44, 836

—s. 291—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[6 C. W. N., 42, 44, 48

—s. 294—

See SALE IN EXECUTION OF DECREE—

INVALID SALES—FRAUD;

[5 C. W. N., 265

SETTING ASIDE SALE—IRREGULARITY.

[I. L. R., 23 All., 478

„ 24 All., 103

—s. 295—

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE

[6 C. W. N., 577

See SALE IN EXECUTION OF DECREE—

DISTRIBUTION OF SALE PROCEEDS;

SETTING ASIDE SALE—GENERAL CASES.

[I. L. R., 29 Calc., 548

—s. 295, prov. (c)—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES

[I. L. R., 30 Calc., 953

—ss. 304 to 319—

Ss. 304 to 319 of the Code of Civil Procedure apply to all sales of immovable property. KRISHNAJI v. MAHADEV VINAYAK (1900)

[I. L. R., 25 Bom., 104

—s. 305—

See ante, s. 244—PARTIES TO SUIT.

[I. L. R., 23 All., 118

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS

[I. L. R., 29 Bom., 379

—s. 307—

See PAYMENT INTO COURT.

[I. L. R., 25 Mad., 535

CIVIL PROCEDURE CODE—continued.

—s. 310A—

See ante, s. 244—PARTIES TO SUIT.
[6 C. W. N., 127]

See APPEAL—

EXECUTION OF DECREE—QUESTIONS IN EXECUTION;
[I. L. R., 25 Bom., 418]

SALE IN EXECUTION OF DECREE.
[I. L. R., 28 Calc., 73]

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—GENERAL CASES.
[I. L. R., 29 Calc., 1, 459]

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE PROCEEDS;
[I. L. R., 30 Calc., 262]

SETTING ASIDE SALE—GENERAL CASES;
IRREGULARITY.
[I. L. R., 26 Bom., 40
" 28 Calc., 73]

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[6 C. W. N., 57]

—s. 311—

See RIGHT OF SUIT—FRAUD
[I. L. R., 29 Calc., 395]

See SALE IN EXECUTION OF DECREE—INTAILED SALES—FRAUD;
[5 C. W. N., 265]

SETTING ASIDE SALE—GENERAL CASES;
[6 C. W. N., 5
I. L. R., 29 Calc., 548, 682
" 25 Mad., 244]

SUBSTANTIAL INJURY;
[7 C. W. N., 439]

IRREGULARITY

—ss. 311, 312—

See SALE IN EXECUTION OF DECREE.
[I. L. R., 28 Calc., 4]

—s. 312—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.
[I. L. R., 26 Bom., 40]

—appeal from order under—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.
[I. L. R., 29 Calc., 548]

—s. 315—

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE . . . 7 C. W. N., 105

CIVIL PROCEDURE CODE—continued.

—s. 315—concluded.

See SALE IN EXECUTION OF DECREE—

JOINT PROPERTY;
[I. L. R., 23 All., 355]
SETTING ASIDE SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE-MONEY.
[5 C. W. N., 240]

—s. 316—

See SALE IN EXECUTION OF DECREE—ERRORS IN DESCRIPTION OF PROPERTY SOLD;
[I. L. R., 27 Bom., 834]
PURCHASERS, TITLE OF
[I. L. R., 24 All., 475]

—s. 317—

See BENAMI TRANSACTION—CERTIFIED PURCHASERS—CIVIL PROCEDURE CODE s. 317.

See SALE IN EXECUTION OF DECREE—ERRORS IN DESCRIPTION OF PROPERTY SOLD . . . I. L. R., 27 Bom., 834

—s. 318—

See BENGAL TENANCY ACT, s. 18.
[7 C. W. N., 591]

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.
[I. L. R., 30 Calc., 710]

—s. 320—

See EXECUTION OF DECREE—EXECUTION BY COLLECTOR I. L. R., 25 All., 167
See LIMITATION ACT, 1877, SCH. II, ART 11 . . . I. L. R., 24 All., 467

—s. 331—

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE

—s. 335—

See LIMITATION ACT, 1877—s. 7 AND SCH II, ART 11;
[I. L. R., 26 Bom., 730]
SCH. II, ART 11.
[I. L. R., 26 Bom., 146]

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.
[I. L. R., 29 Calc., 25]

—s. 336—

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION.
[I. L. R., 26 Mad., 258]

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.
[I. L. R., 25 Mad., 724]

CIVIL PROCEDURE CODE—continued.

—s. 338—concluded.

*See SURETY—**LIABILITY OF SURETY;*

[I. L. R., 24 Mad., 580, 637

" 28 Mad., 368

DISCHARGE OF SURETY.

[I. L. R., 28 Mad., 368

—s. 337—

See WARRANT OF ARREST—CIVIL CASES.

[8 C. W. N., 845

—s. 341—

See ARREST—CIVIL ARREST.

[I. L. R., 26 Bom., 652

—s. 342—

See IMPRISONMENT. 8 C. W. N., 145

—s. 344—

*See APPEAL—ORDERS—ORDER REFUSING**APPLICATION TO BE DECLARED INSOL-**VENT.* I. L. R., 27 Bom., 604*See INSOLVENCY—INSOLVENT DEBTORS**UNDER CIVIL PROCEDURE CODE.*

[I. L. R., 25 All., 204

" 25 Mad., 724

—s. 345—

*See APPEAL—ORDERS—ORDER REFUSING**APPLICATION TO BE DECLARED INSOL-**VENT.* I. L. R., 27 Bom., 604

—s. 347—

*See INSOLVENCY—INSOLVENT DEBTORS**UNDER CIVIL PROCEDURE CODE.*

[5 C. W. N., 91

—s. 349—

See SURETY—LIABILITY OF SURETY.

[I. L. R., 24 Mad., 637

—s. 350—

*See INSOLVENCY—INSOLVENT DEBTORS**UNDER CIVIL PROCEDURE CODE.*

[5 C. W. N., 90, 91

—s. 351—

See APPEAL—ORDERS.

[I. L. R., 23 All., 56

*See INSOLVENCY—INSOLVENT DEBTORS**UNDER CIVIL PROCEDURE CODE.*

[5 C. W. N., 91

—s. 353—

*See INSOLVENCY—INSOLVENT DEBTORS**UNDER CIVIL PROCEDURE CODE.*

[5 C. W. N., 91

—s. 357—

*See INSOLVENCY—INSOLVENT DEBTORS**UNDER CIVIL PROCEDURE CODE—EX-**ECUTION OF DECREE*

[I. L. R., 30 Calc., 407

CIVIL PROCEDURE CODE—continued.

—s. 361—

See ABATEMENT OF SUIT—APPEALS.

[I. L. R., 26 Bom., 597

" 25 All., 27

—s. 362—

See ABATEMENT OF SUIT—APPEALS.

[I. L. R., 25 All., 27

—s. 365—

*See PARTIES—SUBSTITUTION OF PARTIES—**PLAINTIFFS;*

[I. L. R., 27 Bom., 162

" 26 Mad., 224

APPELLANTS.

[I. L. R., 26 Bom., 317

—s. 367—

*See PARTIES—SUBSTITUTION OF PARTIES—**PLAINTIFFS.* I. L. R., 27 Bom., 162

—s. 368—

See ABATEMENT OF SUIT—APPEALS.

[I. L. R., 23 All., 22

" 26 Bom., 203

See APPEAL—ORDERS.

[I. L. R., 25 All., 206

*See PARTIES—SUBSTITUTION OF PARTIES—**DEPENDANTS.*

[7 C. W. N., 529

I. L. R., 28 Mad., 230

See PRACTICE—CIVIL CASES—PARTIES.

[I. L. R., 30 Calc., 609

—s. 372—

See APPEAL—ORDERS.

[I. L. R., 24 All., 342, 532

See ASSIGNMENT OF CHOSE IN ACTION.

[I. L. R., 24 Mad., 252

*See EXECUTION OF DECREE—EXECUTION**AGAINST REPRESENTATIVES.*

[I. L. R., 30 Calc., 961

*See INSOLVENCY—CLAIMS OF ATTACHING**CREDITORS AND OFFICIAL ASSIGNEE.*

[I. L. R., 25 Mad., 406

*See PARTIES—**ADDING PARTIES TO SUITS—**RESPONDENTS;*

[I. L. R., 23 All., 331

*SUBSTITUTION OF PARTIES—PLAINT-**IFFS.* I. L. R., 28 Calc., 171*See PRACTICE—CIVIL CASES—PARTIES.*

[I. L. R., 30 Calc., 609

—s. 373—

*See APPEAL—OBJECTIONS BY RESPON-**DENT—WITHDRAWAL OF APPEAL.*

[I. L. R., 23 All., 130

*See LETTERS PATENT, HIGH COURTS,**1863, CL. 12.* I. L. R., 24 Mad., 293

CIVIL PROCEDURE CODE—continued.

—s. 373—concluded.

See WITHDRAWAL OF SUIT.

[7 C. W. N., 188
I. L. R., 23 All., 218
" 29 Calc., 239]

—s. 375—

See APPEAL—DECREES.

[5 C. W. N., 877]

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.

[I. L. R., 24 Mad., 328
7 C. W. N., 180]

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

—s. 380—

See SECURITY FOR COSTS.

—s. 381—

See RES JUDICATA—CAUSES OF ACTION.

[I. L. R., 28 Bom., 637]

—s. 387—

See COMMISSION—CIVIL CASES.

[7 C. W. N., 808]

See PRACTICE—CIVIL CASES—COMMISSION.

[I. L. R., 30 Calc., 634]

—ss. 394, 395—

See COMMISSIONER FOR TAKING ACCOUNTS.

[5 C. W. N., 692]

—s. 398—

See PARTITION—MISCELLANEOUS CASES.

[5 C. W. N., 128]

—s. 399—

See COMMISSION—CIVIL CASES.

[7 C. W. N., 808]

See PRACTICE—CIVIL CASES—COMMISSION.

[I. L. R., 30 Calc., 634]

—Ch. XXVI (ss. 401 to 415)—

See PAUPER SUIT.

—s. 403—

See TRANSFER OF CIVIL CASES—GENERAL
CASES. . . I. L. R., 24 All., 368

—s. 407—

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.

[I. L. R., 28 Mad., 656]

—ss. 410, 413—

See LIMITATION ACT, s. 4

[I. L. R., 28 Calc., 427]

—s. 418—

See SECRETARY OF STATE.

[I. L. R., 27 Bom., 18]

CIVIL PROCEDURE CODE—continued.

—s. 424—

See BOMBAY CITY IMPROVEMENT ACT.

[I. L. R., 27 Bom., 424]

See PUBLIC OFFICER.

[I. L. R., 28 Bom., 809]

See SECRETARY OF STATE.

[I. L. R., 27 Bom., 189]

1.—Suit against Secretary of State and others—Notice previous to suing Secretary of State for India in Council or public officer—Notice by two out of three joint owners of land—"Cause of action"—Three joint owners of land sued

rates, which
on them by
and 1803.

two of the

plaintiffs, and that notice omitted to state the imposition of the rate for *faali* 1803 as a cause of action, as at the date of its being given the rate for *faali* 1803 had not been levied. On its being contended that the notice was invalid and that the suit founded thereon was unsustainable: *Held* that the notice was not invalid on the ground that it proceeded from only two out of three of the joint owners. The object of the notice required by s. 424 of the Code of Civil Procedure is to give the defendant an opportunity for settling the claim, if so advised, without litigation, and that object had been fully attained by two out of three plaintiffs giving the notice. *Held* also that the notice was not invalid by reason of the fact that the collection of rate for *faali* 1803 had not been stated as a cause of action. The collection of a further sum for a subsequent *faali*, after notice of the suit had been given, was not a fresh cause of action requiring a further notice under s. 424 of the Code of Civil Procedure. The term "cause of action," in s. 424, should not be construed in a narrow sense, the object of the section being merely to inform the defendant substantially of the ground of complaint. SECRETARY OF STATE FOR INDIA IN COUNCIL = PERUMAL PILLAI (1900)

[I. L. R., 24 Mad., 278]

2.—Suit against Secretary of State in Council—Notice—Death of intending plaintiff before institution of suit—Notice already served not available to representatives of original intending plaintiff—Rejection of plaint—Civil Procedure Code, s. 51—Where a person, apparently intending to institute a suit against the Secretary of State in Council, served a notice, in the manner prescribed by s. 424 of the Code of Civil Procedure, of his intention to institute such a suit, but died before the suit was instituted, it was *held* that the notice served under s. 424 did not enure for the benefit of the representatives of the person who had served it and entitle

plaintiff to serve the requisite notice, but its only

CIVIL PROCEDURE CODE—continued.**—s. 424—concluded.**

course is to *Revenue Court—S. 424 of the Civil Procedure Code. Renda*
distinguished
STATE FOR

3. *Plaint, amendment of—Damages, suit for.*—S. 424 of the Civil Procedure Code relates to the institution of a suit against the Secretary of State. There is nothing in the law to show that in case of any amendment, necessitated by alleged discovery of facts previously unknown to the plaintiff, the Secretary of State should have a further notice of two months. No notice of action is required against the Sub-Collector, who is joined in the action with the Secretary of State, inasmuch as he is not sued for any act done by him independently of the Government. *Ezra v. SECRETARY OF STATE (1902)*

[I. L. R., 30 Calc., 38; s.c., 7 C. W. N., 249]

—s. 430—

See PLAINT—VERIFICATION AND SIGNATURE . . . I. L. R., 30 Calc., 103

—s. 432—

—Suit by Ruling Chief—Applicability of s. 432 to suits in Revenue Courts—Plaint—Signature of plaintiff by an unauthorized agent who subsequently becomes empowered to sign—Held that s. 432 of the Code is applicable.

signing had not been specially appointed by the Government for such purpose under s. 432 of the Code of Civil Procedure, but was a general agent.

MAHARAJA OF RIWAH v. SWAMI SARAN (1903)

[I. L. R., 25 All., 635]

—Ch. XXIX (ss. 435, 436)—

See INTEREST—MISCELLANEOUS CASES—BILL OF EXCHANGE

[I. L. R., 30 Calc., 448]

—s. 435—

See PLAINT—VERIFICATION AND SIGNATURE . . . 5 C. W. N., 91

[I. L. R., 30 Calc., 103]

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.

[I. L. R., 26 Mad., 139]

—s. 437—

See PARTIES—

PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.

[6 C. W. N., 488]

CIVIL PROCEDURE CODE—continued.**—s. 437—concluded.**

See PARTIES (contd.)—

SUBSTITUTION OF PARTIES—PLAIN TITS.

[7 C. W. N., 817]

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.

[I. L. R., 29 Calc., 682]

—s. 443—

See ante, s. 108 . I. L. R., 24 All., 383

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE.

[I. L. R., 30 Calc., 618]

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 30 Calc., 1031

" 26 Bom., 298

—s. 457—

See MINOR—REPRESENTATION OF MINORS IN SUITS . I. L. R., 23 All., 459

—s. 462—

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.

[I. L. R., 24 Mad., 826]

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE

[I. L. R., 28 Bom., 109]

7 C. W. N., 90

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 28 Bom., 298

" 29 Calc., 735

—s. 463—

See LUNATIC . I. L. R., 24 Mad., 504

—s. 483—

See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT . . . 7 C. W. N., 216

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

[I. L. R., 26 Mad., 473]

—s. 491—

See APPEAL—ORDERS.

[I. L. R., 24 Mad., 62]

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—ATTACHMENT.

[I. L. R., 26 Mad., 504]

—s. 492—

See INJUNCTION—UNDER CIVIL PROCEDURE CODE . I. L. R., 25 All., 431

" 27 Bom., 357

—s. 493—

See CONTEMPT OF COURT—CONTEMPT GENERALLY . I. L. R., 26 Mad., 494

See INJUNCTION—UNDER CIVIL PROCEDURE CODE . I. L. R., 27 Bom., 357

26 Mad., 188

CIVIL PROCEDURE CODE—continued.**—s. 493—concluded.**

See SPECIAL OR SECOND APPEAL—ORDERS
SUBJECT OR NOT TO APPEAL.

[I. L. R., 24 Mad., 447]

—s. 501—

See CONTRIBUTION, SUIT FOR—PAYMENT
OF JOINT DEBT BY ONE DEBTOR.

[I. L. R., 26 Mad., 686]

—Right of suit—ss. 501, 593—Decree not

have contained such an order and is imperfect

—s. 503—

See RECEIVER . . . 5 C. W. N., 223
[7 C. W. N., 452
I. L. R., 30 Calc., 696]

—Ch. XXVII (ss. 506 to 526)—

See APPEAL—ARBITRATION.

[I. L. R., 29 Calc., 167]

See ARBITRATION.

—s. 508—

See APPEAL—ARBITRATION

[I. L. R., 26 Mad., 47]

See ARBITRATION—REFERENCE OR SUBMIS-
SION TO ARBITRATION

[7 C. W. N., 180, 343]

I. L. R., 24 All., 229

" 28 Calc., 303

See COMPROMISE—COMPROMISE OF SUITS
UNDER CIVIL PROCEDURE CODE

[I. L. R., 30 Calc., 218]

—ss. 510, 514—

See ARBITRATION—REVOCATION OF, OR
WITHDRAWAL FROM, ARBITRATION.

[I. L. R., 24 All., 313]

CIVIL PROCEDURE CODE—continued.**—s. 521—**

See ARBITRATION—AWARDS—VALIDITY OF
AWARDS, AND GROUNDS FOR SETTING
THEM ASIDE.

—s. 522—

See APPEAL—ARBITRATION.

[I. L. R., 29 Calc., 167]

" 26 Mad., 47

—s. 523—

See ARBITRATION—REFERENCE OR SUB-
MISSION TO ARBITRATION.

[7 C. W. N., 180]

See COMPROMISE—COMPROMISE OF SUITS
UNDER CIVIL PROCEDURE CODE.

[I. L. R., 30 Calc., 218]

—s. 525—

See ARBITRATION—

REFERENCE OR SUBMISSION TO
ARBITRATION;

[I. L. R., 24 Mad., 326]

AWARDS—VALIDITY OF AWARDS;

[I. L. R., 29 Calc., 278]

PRIVATE ARBITRATION.

[I. L. R., 24 Mad., 31]

See LEASE—CONSTRUCTION—PROVISION
FOR RENEWAL. I. L. R., 30 Calc., 631

—Ch. XXXIX (ss. 532 to 538)—

See NEGOTIABLE INSTRUMENTS, SUMMARY
PROCEDURE ON . . . 5 C. W. N., 256

—s. 539—

See DECLARATORY DECREE, SUIT FOR—
ENDOWMENT. I. L. R., 26 Mad., 450

See REFERENCE TO HIGH COURT—CIVIL
CASES . . . I. L. R., 25 Bom., 327

See RIGHT OF SUIT—CHARITIES AND
TRUSTS . . . I. L. R., 24 All., 631

—s. 540—

See APPEAL—DECREE

[I. L. R., 29 Calc., 61]

See MADRAS GENERAL CLAUSES ACT, s. 8.
[I. L. R., 24 Mad., 39]

See TRANSFER OF PROPERTY ACT—

ss. 88 and 89;

[I. L. R., 25 Mad., 244]

s. 89 . . . I. L. R., 29 Calc., 651

—s. 544—

See ABATEMENT OF SUIT—APPEALS.

[I. L. R., 25 All., 27]

1.—Joint appeal—Appeal—Joint appellant
—Presentation of appeal beyond time—Affidavit
excusing delay in appealing made by only one

CIVIL PROCEDURE CODE—continued.

—s. 544—continued.

a partition suit a decree was passed against twenty-four defendants, whose interests in the subject-matter of the suit were not identical. Part of the property in suit consisted of a *kulkarni ratan*, one-third share of which (*inter alia*) was given by the decree to the plaintiffs. Eleven of the defendants appealed against the decree, of whom only six (defendants 1 to 6) had an interest in the *kulkarni ratan*. The decree was passed on the 11th April, 1898, and the appeal was not presented until the 7th June, 1898, i.e., beyond the period (thirty days) allowed by the Limitation Act (XV of 1877). The only affidavit excusing the delay was made by defendant 14, who was not

appellate Court modified the decree and reduced the one-third share of the *kulkarni ratan* given to the plaintiffs to a one-sixth share. The plaintiffs thereupon appealed to the High Court. Held (reversing the decree of the lower Appellate Court and restoring that of the first Court) that the Appellate Court erred in altering the share of the *kulkarni ratan*. Defendant 14 had no interest in the variation of the decree, having no interest in the *kulkarni ratan*, and s. 544 of the Civil Procedure Code (Act XIV

2. —Appeal by two parties on grounds common to all.—A brought a suit against B, C, D and others, for recovery of possession of certain immovable property as follows:

B and C alone preferred an appeal, and the lower

being had to the terms of the provisions of s. 544 of the Civil Procedure Code, the Court below was right in allowing the appeal in favour of D also. *Syed Hossain v. Madan Khan* (1924), I. L. R., 17 Mad., 265, dissented from. *Sreeram Ghattuck v. Broje Mohan Ghosal* (1969), 11 W. R., 419, and *Boyd Nath Sarmak v. Ojan Bilee* (1969), 11

CIVIL PROCEDURE CODE—continued.

—s. 544—concluded.

W. R., 239, distinguished. *RAM KAMAL SHANU v. AHMAD ALI* (1903) . I. L. R., 30 Cal., 429

3. —Practice—Procedure—Civil Procedure Code (Act XIV of 1892), ss. 362, 544 and 583—Appeal—Death of joint appellant pending appeal—Legal representatives of deceased appellant not brought on the record—Appeal proceeded with by surviving appellant—Power of Court to hear the appeal and reverse whole decree.—In a suit for partition, the lower Court passed a decree for the plaintiffs. Two of the defendants, who denied the plaintiffs' right and claimed the property as their own, filed a joint

defendants had appealed on grounds common to them both, the lower Appellate Court set aside the app s. 544 (1892).

—s. 545—

See EXECUTION OF DECREE—STAT OF EXECUTION

[I. L. R., 25 Bom., 243, 583

28 Cal., 734

5 C. W. N., 781

See SURETY—ENFORCEMENT OF SECURITY

[I. L. R., 25 Bom., 409

30 Cal., 1060

—s. 546—

See EXECUTION OF DECREE—STAT OF EXECUTION

[I. L. R., 25 Bom., 243, 583

See SURETY—ENFORCEMENT OF SECURITY

[I. L. R., 25 Bom., 409

—s. 556—

See APPEAL—DEFAULT IN APPEARANCE

[I. L. R., 24 All., 484

28 Mad., 267

—s. 558—

See APPEAL—DEFAULT IN APPEARANCE.

[I. L. R., 24 All., 484

28 Mad., 269

—s. 560—

—Rehearing of appeal, heard *ex parte*—Limitation—Amendment.—An application for rehearing of an appeal presented originally within the period of limitation, but returned for amendment and presented, after amendment, after the period of

CIVIL PROCEDURE CODE—continued.**—s. 580—concluded.**

Limitation, cannot be rejected as being out of time.
SHAMA PRASAD GHOSH v. TARI MULLIK (1901)
 [5 C. W. N., 818]

—s. 581—

See **APPEAL—OBJECTIONS BY RESPONDENT.**

[I. L. R., 25 All., 628
 „ 23 All., 93, 130]

See **COURT-FEES ACT, 1870, s. 16.**

[I. L. R., 25 Mad., 24]

—s. 582—

See **APPEAL—EX PARTE CASES**

[5 C. W. N., 153]

See **APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS.** I. L. R., 23 All., 629

See **REMAND—**

POWER OF REMAND;

[I. L. R., 23 All., 167]

CASES OF APPEAL AFTER REMAND

[5 C. W. N., 326]

I. L. R., 28 Calc., 324

„ 28 Mad., 518

—ss. 584, 586—

See **REMAND—POWER OF REMAND.**

[I. L. R., 23 All., 167]

—s. 588—

See **APPELLATE COURT—EVIDENCE AND**

ADDITIONAL EVIDENCE ON APPEAL.

[I. L. R., 23 All., 121
 6 C. W. N., 31]

—s. 571—

See **PARTIES—SUBSTITUTION OF PARTIES—APPELLANTS.** I. L. R., 26 Bom., 317

—s. 575—

See **LETTERS PATENT, HIGH COURTS, 1865, CLS. 15 AND 30**

[I. L. R., 25 Mad., 548]

—s. 578—

See **APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.**

See **INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE**

[5 C. W. N., 91]

See **MINOR—REPRESENTATION OF MINOR IN SUITS** I. L. R., 30 Calc., 1031

See **REMAND—CASES OF APPEAL AFTER REMAND** I. L. R., 28 Calc., 324

See **WITNESS—CIVIL CASES.**

[I. L. R., 28 Calc., 37]

—s. 582—

See **ABATEMENT OF SUIT—APPEALS.**

[I. L. R., 26 Bom., 303, 597]

I. L. R., 23 All., 32

„ 25 All., 27

CIVIL PROCEDURE CODE—continued.**—s. 582—concluded.**

See **APPEAL—ORDERS.**

[I. L. R., 25 All., 174]

See **APPELLATE COURT—**

INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT;

[I. L. R., 30 Calc., 518]

EXERCISE OF POWERS—SPECIAL CASES—PLAINT, AMENDMENT OF.

[5 C. W. N., 273]

—s. 582A—

See **COURT-FEES ACT, s. 28.**

[I. L. R., 25 Mad., 380]

—s. 583—

See *ante*, s. 244—**QUESTIONS IN EXECUTION OF DECREES**

[I. L. R., 25 All., 441]

See **APPEAL—EXECUTION OF DECREES—PARTIES TO SUITS.** 5 C. W. N., 426

See **ATTACHMENT—SUBJECTS OF ATTACHMENT—MISSE PROFITS.**

[I. L. R., 24 Mad., 341]

See **EXECUTION OF DECREE—APPLICATION FOR EXECUTION, AND POWERS OF COURT.**

[5 C. W. N., 287]

See **MISSE PROFITS—ASSESSMENT IN EXECUTION, AND SUITS FOR MISSE PROFITS.**

[I. L. R., 24 All., 361]

—s. 584—

See **SPECIAL OR SECOND APPEAL.**

—s. 585—

See **SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTIONS OF FACT.**

[I. L. R., 26 Bom., 617]

—s. 586—

See **SPECIAL OR SECOND APPEAL—**

ORDERS SUBJECT OR NOT TO APPEAL;

[I. L. R., 25 Mad., 540]

SMALL CAUSE COURT SUITS.

—s. 588—

See **APPEAL—**

EX PARTE CASES;

[I. L. R., 25 All., 280]

EXECUTION OF DECREES; ORDERS

See **LETTERS PATENT, HIGH COURTS, 1865, CL. 15** I. L. R., 25 Mad., 555

See **PAUPER SUIT—APPEALS**

[I. L. R., 23 All., 364]

See **REMAND—CASES OF APPEAL AFTER REMAND** I. L. R., 28 Calc., 324

„ 28 Mad., 518

See **SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.**

CIVIL PROCEDURE CODE—continued.

—s. 588, cls. (18) and (21)—

See PARTIES—SUBSTITUTION OF PARTIES
—PLAINTIFFS

[I. L. R., 27 Bom., 162

" 28 Calc., 171

—s. 589—

See APPEAL—ORDERS.

[I. L. R., 23 All., 56

" 27 Bom., 604

" 25 All., 174

—s. 591—

See APPEAL—

DEFAULT IN APPEARANCE;

[I. L. R., 24 All., 464

EX PARTE CASES.

[I. L. R., 25 All., 280

See LETTERS PATENT, HIGH COURTS—
1865, CL. 15. I. L. R., 25 Mad., 555See PARTIES—SUBSTITUTION OF PARTIES
—PLAINTIFFS I. L. R., 27 Bom., 162

—s. 592—

See PAPER SUIT—APPEALS

[I. L. R., 24 All., 172

I. L. R., 26 Mad., 369, 437

—ss. 594 to 616—

See APPEAL TO PRIVY COUNCIL.

—s. 594—

—meaning of "decree"—

See APPEAL TO PRIVY COUNCIL—
PRACTICE AND PROCEDURE—LEAVE TO
APPEAL. I. L. R., 27 Bom., 415

—ss. 594, 595 (a)—

See APPEAL—EX PARTE CASES.

[5 C. W. N., 153

—ss. 596, 600—

See PRIVY COUNCIL, PRACTICE OF—
SPECIAL LEAVE TO APPEAL.

[6 C. W. N., 382

—s. 617—

See REFERENCE TO HIGH COURT—CIVIL
CASES. I. L. R., 25 Bom., 327

—ss. 617, 621—

See SMALL CAUSE COURT, PRESIDENCY
TOWNS—PRACTICE AND PROCEDURE
—REFERENCE TO HIGH COURT.

[I. L. R., 30 Calc., 458

—s. 622—

See APPEAL—ORDERS

[I. L. R., 28 Calc., 177

See PRACTICE—REVENUE—VAKIL AND
COUNSEL. I. L. R., 30 Calc., 888See SUPERINTENDENCE OF HIGH COURT—
CIVIL PROCEDURE CODE, s. 622.**CIVIL PROCEDURE CODE—concluded.**

—s. 623—

See LIMITATION ACT, 1877, s. 5 AND
SCH. II, ART. 173.

[I. L. R., 26 Bom., 485

See REVIEW.

—s. 629—

See APPEAL—ORDERS. 5 C. W. N., 485

See LIMITATION ACT, 1877, s. 5, AND SCH.
II, ART. 173. I. L. R., 26 Bom., 485

—s. 640—

See PAUPER SUIT—APPEALS.

[I. L. R., 24 All., 172

—s. 644—

See WARRANT OF ARREST—CIVIL CASES.
[5 C. W. N., 845

—s. 646B—

See REFERENCE TO HIGH COURT—CIVIL
CASES. I. L. R., 25 All., 135

—s. 647—

See APPEAL—EXECUTION OF DECREES—
QUESTIONS IN EXECUTION.

[I. L. R., 26 Mad., 426

See REFERENCE TO HIGH COURT—CIVIL
CASES. I. L. R., 25 Bom., 327

—s. 648—

See ATTACHMENT—ATTACHMENT BEFORE
JUDGMENT. 7 C. W. N., 216

—s. 649—

See EXECUTION OF DECREE—TRANSFER
OF DECREE FOR EXECUTION

[5 C. W. N., 150

—s. 651—

See APPEAL—OBJECTIONS BY RESPONDENT.
[I. L. R., 30 Calc., 655

—Sch. IV, Form 109—

See INTEREST—MISCELLANEOUS CASES—
MORTGAGE. 5 C. W. N., 769

—Form 115—

See PROBATE—OPPOSITION TO, AND REVO-
CATION OF, GRANT. 5 C. W. N., 383

—Forms 125, 126—

See WITNESS—CIVIL CASES—SUMMONING
AND ATTENDANCE OF WITNESSES.

[I. L. R., 24 Mad., 300

—Form 136—

See WARRANT OF ATTACHMENT.

[I. L. R., 29 Calc., 244

—Form 154—

See WARRANT OF ARREST—CIVIL CASES.
[6 C. W. N., 845

CIVIL PROCEDURE CODE AMENDMENT ACT (V OF 1894).

See SALE FOR APPEARS OF RENT—SETTING ASIDE SALE—GENERAL CASES.

[I. L. R., 39 Calc., 1

CLAIM.

—abandonment of—

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

—alternative—

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.

[I. L. R., 34 Mad., 409

—bona fide claim of right—

See MISCHIEF . 7 C. W. N., 859

—proof of—

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

[5 C. W. N., 91

CLAIM TO ATTACHED PROPERTY.

See BENGOAL TENANCY ACT, s 170

[I. L. R., 28 Calc., 382.

See CIVIL PROCEDURE CODE, s 241—PARTIES TO SUIT.

[I. L. R., 30 Calc., 134

6 C. W. N., 427

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE

[I. L. R., 26 Mad., 673

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES

[7 C. W. N., 243

1.—Co-heirs—Execution of decree—Civil Procedure Code, s. 263—Decree against one only of several co-heirs of deceased debtor—Transfer by judgment-debtor of property belonging to himself and co-heirs—Plea of *ius tertii* raised by trans-

I. L. R., 7 All., 822, Nathmal Dass v. Tajammul

CLAIM TO ATTACHED PROPERTY—continued.

"Judgment—Appeal—Ancient person sitting on the Original Side of the High Court, dismissing a claim preferred under ss 278 and 282 of

mortgagees according to the provisions of them, appoint out prob then call the three other creditors upon a claim petition, holding that the attachment might be declared to be subject to the mortgage. Held that the applicants were competent to prefer the claim and establish, within

trustee, they had a beneficial *in equitatem* interest therein. A beneficial interest is as much an interest, as a legal interest in

CURRI v.

3 Mad., 555

3.—Party—Civil Procedure Code (Act XIV of 1892), s 283—"Party against whom an order has been made"—Plaintiff sued to recover possession of immovable property. The land in question had, on a previous occasion, been attached in execution of a decree against plaintiff, whereupon his younger brother, the present second defendant, had preferred a claim-petition, on which an order was passed holding that plaintiff (then judgment-debtor) and second defendant (then claimant) were jointly entitled to the land. The claim was held to be good to the extent of a moiety of the land, which was accordingly released from attachment, the other moiety being ordered to be sold, the claimant's claim thereto being rejected. Plaintiff satisfied the decree, and the property was not sold. He now sued to recover possession of it. Held that, having regard to the terms of the order in the claim proceedings, and to the fact that it had not been proved that plaintiff had actually received notice of them, plaintiff was not a party against whom an order had been made, within the meaning of s. 283 of the Code of Civil Procedure, and that the order was not conclusive against him. *Nelutem Perengaryprom v. Tajamhary Parameshwaram Nombudri, J M. H C R., 472, doubted* MOHIN KURRI v. KUNAI KURRI All (1902) . I. L. R., 28 Mad., 731

CLAIM TO ATTACHED PROPERTY—
continued.

4—Possession—Civil Procedure Code (Act

s. 244, Civil Procedure Code, but it is a claim under s. 278, and no appeal lies against an order passed in such a case. *Rajrup Singh v. Ram Golan*

Dom, 237, referred to. BHAJANARI PAL & RAM LAL
DAS (1901) 6 C. W. N., 63

5. Attachment—Claim—Property attached in possession of, and standing in the name of, some person other than the judgment-debtor—Civil Procedure Code (Act XII of 1952), ss. 278, 280—In an investigation under s. 280 of the Civil Procedure Code, the Court has to determine the question of possession merely, and cannot

held merely on suspicion that the claim is untenable. *Sreeman Chander Dey v. Gopal Chander Chukerbarty* (1886), 11 *M. I. A.*, 28, and *Moonahree Buxtor v. Rakeem v. Shumssoonissa Begum* (1867), 11 *M. I. A.*, 51, referred to. *МОУМОНИРЕ ДАСЕР v. РАНА КРИСТО ДАС* (1902)

6.—Right to receive debt.—Civil Procedure Code (Act XIV of 1882), ss 280, 291, 283.—Property in the possession of a judgment-debtor.—Attachment of right to receive a debt.—Specific Relief Act (I of 1877), s 42.—Consequential relief.—First defendant had obtained a decree against second defendant, in execution of which he had attached and sold the second defendant's right to collect rent payable to him in respect of certain properties by tenants for a certain year. A claim had been preferred by plaintiff, objecting to the said attachment on these grounds, under s 278 of the Code of Civil Procedure, but had been rejected. Plaintiff now sued for a declaration that the attachment and sale were invalid on the grounds that the properties belonged to a certain *muff*, and not to second defendant; that second defendant had been

CLAIM TO ATTACHED PROPERTY—
concluded.

manager of the *muff*, but had been dismissed, plaintiff replacing him; and that the rents in question were not liable for the debts of second defendant. The plaintiff prayed for no relief consequential to the declaration. *Held* that the attachment was of a debt in respect of which prohibitory orders had been issued under s. 268 of the Code of Civil Procedure; that the attachment of a right to receive a debt is not properly capable of possession within the meaning of ss 250 and 281 of the Code of Civil Procedure; and that the suit was therefore not one instituted under s. 283 to establish a right to attached property; and that it had been properly dismissed. *Musamut Rambutty Koer v. Kamestur Pershad, 22 W. N., C. R. 36*, referred to *BARAYATTA v. SYED ABBAS SAHSE (1900)*

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bitity—Evidence of a foreign witness taken in foreign territory outside the jurisdiction of this Court under a commission rightly issued under s 387 of the Civil Procedure Code, and executed in accordance with the provisions of s 399 of the same, is admissible, and s 13 of the Oaths Act has no application. **KADAMBINI DASSI v KUMUDINI DASSI (1903)**
[7 C. W. N., 808]

3.—Refusal of admission to Commissioner
—**Criminal Procedure Code (Act V of 1898), s 467**
—**Examination on commission—Notice of issue of commission to a party's pleader—Civil Procedure Code (Act XIV of 1852), s 40—Service—Refusing admission to commission—Penal Code (Act XLV of 1860), s 174, proceedings under—**
A commission was issued to take the deposition of the defendant in a civil suit, a lady. A notice of the commission was shown to the pleader of the lady, and his signature taken thereupon; the notice was not addressed to any particular person. On the day appointed for the commission, the doors of the lady's

properly served on the pleader. Also that there is

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COUNTS—concluded**

Commissioner—Held per PRINSEP and HILL, JJ.
(MACLEAN, C.J., dissenting)—In an appeal from a

limited to questions of principle when examining such report. *Ahmed Nannu Bhai v. Kharap Karim*

Commissioner before it accepts them, and the fact that the judgment of the first Court is in affirmance of the report of a Commissioner does not affect the powers of the Court of Appeal. *Moung Tha Hnyeen v. Moung Pan Nyo* (1900), 4 C. W. N., 808, distinguished *Watson v. Aga Mehedee Sherazee* (1874), L. R., 1 L. A., 346, referred to. *Per PRINSEP, J.*—The report of a Commissioner requires affirmance by an order of Court, to make it operative, and cannot be regarded as a judgment of a Court. *Per HILL, J.*—Under s 395, Civil Procedure Code, the report of a Commissioner, if accepted by the Court, is only evidence in the suit of facts found by him, but is not a decision, nor can it be treated on the same footing as the verdict of a jury. *Mackintosh v. Great Western Ry Co* (1887), 4 Giff., 683, and *Moung Tha Hnyeen v. Moung Pan Nyo* (1900), 4 C. W. N., 808, distinguished *Baroness Wenlock v. River Dee Company* (1857), 19 Q. B. D., 155, referred to. *Per MACLEAN, C.J.*—If there has been a fair investigation of the matter by the Registrar, and his finding has been confirmed by the Judge of first instance, the Court of Appeal ought not to interfere except on the strong ground of manifest error or manifest abuse. It should not interfere merely on the ground that if the matter *res integra* it would have been disposed to attach more weight to this or that particular piece of evidence. *Mackintosh v. Great Western Ry Co* (1887), 4 Giff., 683, and *Moung Tha Hnyeen v. Moung Pan Nyo* (1900), 4 C. W. N., 808, referred to. *CHITTY v. MAHOMED ESSA SAHER* (1901)

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GHOSE v. KIDQ-EMPEROR (1901)

[5 C. W. N., 411]

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See KIDNAPPING. 6 C. W. N., 108.

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See COMPANY

—s. 169—*Appeal from order in winding up—
Ex parte application for extension of time—Service*

—*Winding up petitions.* An *ex parte* application was made by them, under s 169, for an extension of time

sary, but, inasmuch as the order granting an *ex*

COMPANIES ACT (VI OF 1882)— concluded

tension had been made *ex parte*, the respondents were entitled to raise objection to it at the hearing. Such an appeal must, under s. 169, be filed within three weeks of the date of the order, *the latest Per BHASHYAM AYYANGAR, J.*—While refraining from expressing an opinion on the point, the terms of s. 169 of the Companies Act are probably complied with by lodging the memorandum of appeal. *LAKSHMISARASAYTA SETHI v. VENKANNA SETHI (1901) I. L. R., 25 Mad., 576*

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1. TRANSFER OF SHARES, AND RIGHTS OF TRANSFEREES

1.—Rectification of register—*Indian Com-
panies Act (VI of 1882), s. 69—Application for
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COMPANY—continued

1. TRANSFER OF SHARES, AND RIGHTS OF TRANSFEREES—continued

s. 115—*Estoppel—Hindu Law—Property held by*

pany credited the amounts paid by the successor towards the amount due as calls on the shares. Subsequently plaintiff, another successor in the office, applied to have the company's share register altered, so that the shares should stand in the name of the *mutt*. This the directors refused to do unless plaintiff provided them with a transfer from the original allottee (who was still alive) or an indemnity by the *mutt*. Plaintiff did neither, and the shares were ultimately declared by the company to be forfeited. Plaintiff now sued the company, claiming that the shares were not the private property of the original allottee, but belonged to the *mutt*, and that the declaration should be declared to be

arose that the money paid belonged to the *mutt*. Nor was the company estopped, by s. 115 of the

Act, though such an application could not have been successful, as in the circumstances he could not have

2.—Sale of shares—*Voucher by company of title of vendor—Estoppel—Pukka receipt issued by company*—In 1898 the plaintiff, through his broker, purchased in the open market three shares in the defendant company. According to the practice usual in Bombay, the transfer deeds signed by the vendors were brought to him by his broker and were signed by him and returned to the seller's broker, who lodged them, together with the share certificates, in the office of the company, and obtained a *katcha* receipt for the same, addressed to the seller. The directors of the company having duly approved of the transfers, the seller's broker returned the *katcha* receipt and obtained from the company a *pukka* receipt addressed to the plaintiff (i.e., the purchaser) in the following terms: "Received for transfer the following share certificates with transfer deeds duly executed —

Nos .
Total shares only.

(Sl.)—Transfer Clerk.

N.B.—This receipt shall be presented within one week from this date, when the share certificates will

COMPANY—continued.**1. TRANSFER OF SHARES, AND RIGHTS OF TRANSFEREES—concluded.**

be returned. The Company will not hold itself responsible for the safe custody of the above share beyond one week from this date." This *pukka* receipt was given by the seller's broker to the plaintiff's broker, who handed it to the plaintiff, and the latter thereupon (in accordance with the practice in Bombay) paid the price of the share. No fresh certificate was issued by the company to the plaintiff, but his name was endorsed by the company on the existing certificate as transferee. He was also duly registered as transferee in the books of the company. It was subsequently discovered that, by reason of a previous transfer of the said three shares having been forged, the plaintiff's vendor had no title, and by a decree in a suit filed by the real owner of the shares the plaintiff was ordered to give them up. He thereupon filed this suit to recover the value of the shares from the company, contending that by their *pukka* receipt the company had represented to him that he was obtaining shares in the company, and that upon that representation he had paid for them, and that the company were estopped from denying that he was entitled to them. *Held* that the company were not

2 MEETINGS AND VOTING.

—*Articles of Association—General meeting of shareholders—Proxies—Qualification of proxy—Memorandum of Association—Alteration of Memorandum of Association—Act XII of 1895*—The right of a shareholder to vote by proxy depends on the contract between himself and his co-shareholders, and, where parties have a right depending on the contract between them and other parties, then

conditions, viz., that the proxy should be a shareholder at the date of his appointment and also at the date when he acted. By a power-of-attorney dated the 14th October, 1891, some of the shareholders in the above company authorized and appointed certain specified persons "and all persons who at any time during the continuance of these powers-of-attorney may be partners in the firm of Messrs Wallace & Co., of Bombay, however that firm may be constituted . . . and in the absence from Bombay" of all the said persons, "then the person or persons for the time being holding the procuration of the said firm, and managing the said business, jointly and each of them severally" to vote as proxy for them at meetings of the above company. On the 20th March, 1899, A became a shareholder in the company, and on the 1st April, 1899, he began to

COMPANY—concluded.**2. MEETINGS AND VOTING—concluded.**

manage the business of Wallace & Co., holding its procuration. Under the above power he voted as proxy at meetings of the company held in 1902 for the purpose of altering the Memorandum of Association. *Held* that, not having been a shareholder

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[I. L. R., 27 Bom., 113]

3 WINDING UP.

—*Liability of Directors and Officers—Indian Companies Act (VI of 1882), ss. 77, 136, 178, 214—Directors of a company, misappropriation by—Power of Court to make an order under s. 214 of the Companies Act, rendering all the Directors jointly liable for misappropriation—Jurisdiction of District Court to wind up a company—Misfeasance and nonfeasance—Liability of individual Directors*—S. 214 of the Indian Companies Act of 1882 gives a summary remedy only against such Directors or other officers of a company as have been personally guilty of some act of misfeasance, and does not give the Court power to make an order against the Directors *en masse* for all acts of misfeasance without any specific finding against the individuals who are actually responsible for the particular acts of misfeasance, as contemplated by that section. *Trevor v. Whitworth* (1837), L. R., 12 A. C., 409; *In re National Funds*

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[I. L. R., 29 Calc., 688.]

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[I. L. R., 30 Calc., 1063]

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—claim for—

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62, 97 . . . I. L. R., 25 Bom., 593

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(a) FOR LOSS OR INJURY CAUSED BY
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(b) TO ACCUSED, ON DISMISSAL OF COM-
PLAINT "

COMPENSATION—CRIMINAL CASES
—concluded.

See FALSE CHARGE.

[I. L. R., 29 Calc., 479

(a) FOR LOSS OR INJURY CAUSED BY OFFENCE

1.—Expenses of prosecution—*Criminal
Procedure Code (Act V of 1898), s 545—Order for
payment of expenses of prosecution out of fine—
Court-fees Act (VII of 1870), s 31—Re-pay-*

were levied under s 31 of the Court-fees Act as
Court-fees paid by the complainant, and Rs 10 under
s. 545 of the Code of Criminal Procedure for two
fees of Rs 5 each paid by the complainant to the
medical officer for a certificate and for giving evi-
dence in the case. Objection having been made to
the recovery of these sums, the case was referred to
the High Court for orders. Held that the levy of
Court-fees was warranted by s. 31 of the Court-fees
Act, which is not modified by s. 545 of the Code of
Criminal Procedure. Held also that the Deputy

ant out of the fine levied from the accused, and not in
addition to it. QUEEN-EMRESS v YAMANA BAO
(1900). I. L. R., 24 Mad., 305

2.—Imprisonment in default—*Order of
payment of compensation and imprisonment in de-
fault of such payment—Legality of such order—
Compensation recoverable as fine—Code of Crimi-
nal Procedure (Act V of 1898), ss 250, 350, 357,
358 and 359.—A Magistrate passed an order, under
s. 250 of the Code of Criminal Procedure, directing
the complainant to pay compensation in a certain
sum, and he further directed that "if the compen-*

But, in regard to an order of imprisonment in such a
case, s 250, proviso (2), declares that "if the com-
pensation cannot be recovered, simple imprisonment
may be awarded for such term not exceeding 30
days." The alternative (imprisonment) therefore
can only be awarded if compensation cannot be re-
covered. LAL MAHMUD SHAH v. SATOWRI BISWAS
(1900) I. L. R., 28 Calc., 164

(b) TO ACCUSED, ON DISMISSAL OF COMPLAINT.

3.—Imprisonment in default—*Code of Crimi-
nal Procedure (Act V of 1898), s 250—Com-*

COMPENSATION—CRIMINAL CASES

—continued.

(b) TO ACCUSED, ON DISMISSAL OF COMPLAINT—continued

penation for vexatious accusation—Imprisonment in default of payment of compensation—Simultaneous order.—It is only after an attempt has been made to realize the compensation awarded that a Magistrate is competent to pass an order of imprisonment for default. A simultaneous order of imprisonment in default of payment of compensation is illegal. *PRITA NATH BOSE v. ROY BASANTA KUMAR SINHA* (1900). 5 C. W. N., 213

4. ——— Code of Criminal Procedure (Act V of 1908), s. 250—Compensation for frivolous and vexatious accusation, objection against, failure to record and consider—Simultaneous order of imprisonment in default of compensation.—A Magistrate ought to record and

[5 C. W. N., 214]

5. ——— Code of Criminal Procedure (Act V of 1898), s. 250—False case—Imprisonment in default of payment of compensation—Summary proceeding—Conviction of offence under Penal Code (Act XLV of 1860), s. 211—It is only if the compensation ordered to be paid under s. 250, proviso (2), of the Code of Criminal Procedure cannot be recovered that imprisonment can be awarded; therefore an order of imprisonment passed before any attempt is made towards recovery of the sum ordered to be paid as compensation, is bad. § 250 of that Code does not contemplate that compensation shall be awarded because a case is found to be false, but where the Magistrate is satisfied that the accusation is frivolous and vexatious. The words "frivolous and vexatious" in the section indicate an

[I. L. R., 28 Calc., 251]

[The above case, No. 5, has been overruled by a Full Bench—see case No. 11 in column 203, post.]

6. ——— Criminal Procedure Code (Act V of 1908), ss. 250, 393 (2)—Compensation in respect of vexatious complaint—Sentence of imprisonment on non-production of sureties and on complaint of inability to pay—Legality.—A Deputy Magistrate, having held that a complaint was vexatious, ordered the complainant to pay compensation under s. 250 of the Code of Criminal Procedure. He recorded the following order—

COMPENSATION—CRIMINAL CASES

—continued

(b) TO ACCUSED, ON DISMISSAL OF COMPLAINT—continued.

"The complainant is unable to produce any sureties, and pleads inability to pay the compensation. He is awarded 30 days' simple imprisonment." No

trate cannot make an order for imprisonment on the mere intimation by the person who is directed to pay the compensation that he is unable to do so. Under s. 393 (2), the issue of a warrant for the levy by distress of the amount awarded as compensation is a condition precedent to the carrying out of the sentence of imprisonment. *IN THE MATTER OF BERAVALU NAIDU* (1902)

[I. L. R., 28 Mad., 127]

Code of Criminal Procedure; and, where a case has been instituted in consequence of a complaint made to a Village Magistrate, who sent a report to the police, who submitted a charge sheet, the person who com-

8.—Order in what cases may be made—Accused, order for payment of compensation to—Case which is false as well as frivolous or vexatious—Criminal Procedure Code (Act V of 1898), s.

9.—Order when to be made—Criminal Procedure Code, s. 250—Frivolous accusation—Award of compensation to accused—Such award to be made by the order of discharge or acquittal, and not by a separate order.—When a Magistrate, on finding a complaint to be frivolous or vexatious, thinks it right to award compensation to the complainant, he must do so by his order of discharge or acquittal. Where a Magistrate made such an order in a separate proceeding after the accused had been discharged, it was held that his order was not merely irregular, but without jurisdiction. *IN THE MATTER OF THE COMPLAINT OF SAYDAR HUSAIN* (1901)

[I. L. R., 25 All., 315]

COMPENSATION—CRIMINAL CASES

—continued

(b) To ACCUSED, ON DISMISSAL OF COMPLAINT—continued

10.—Police officer—*Criminal Procedure Code (Act I of 1898)*, s. 250, 4 (h), 250—*Compensation for frivolous and vexatious accusation—Information given by a police constable, whether comes within s. 250—Complaint—S. 250 of the Code of Criminal Procedure does not apply to a case instituted*

11.—*Criminal Procedure Code (Act I of 1898)*, s. 4 (h), 250—*Complaint—Report of police officer—Complaint by a police officer in a non-cognizable case—False complaint—There is no section in the Criminal Procedure Code which empowers a police officer to make, on his own motion, any report to a Magistrate in a non-cognizable case; hence, where he files a formal complaint in such a case, he cannot be said to 'make a report,' and his complaint falls within the definition of 'complaint' in s. 4 (h) of the Criminal Procedure Code, 1898. Where a police officer appears before a Magistrate and makes a formal complaint of a non-cognizable offence, which is found to be false, the Magistrate can order him, under s. 250 of the Criminal Procedure Code, to pay compensation to the accused. KING-EMPEROR v. SADA (1901)*

[I. L. R., 28 Bom., 150]

12.—*Criminal Procedure Code (Act I of 1898)*, s. 250—*No power to order a police officer, v. That sec*

of the old Act and s. 250 of the present Act BANADUR ALI v. NUR MAHOMED (1902)

[7 C. W. N., 206]

13.—*Security to keep the peace—Criminal Procedure Code (Act I of 1898)*, s. 250—*Application for an order that a person should give security to keep the peace—Refusal of application—Compensation under s. 250 of Criminal Procedure Code*

COMPENSATION—CRIMINAL CASES

—concluded.

(b) To ACCUSED, ON DISMISSAL OF COMPLAINT—concluded

meaning of s. 250 of the Code. *Queen-Empress v. Lakshpat (1893)*, I. L. R., 18 All., 365, followed. *In re GOVIND HANMANT (1900)*

[I. L. R., 25 Bom., 48]

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See DEFAMATION—IMPUTATION ON A WIFE.
[I. L. R., 25 Bom., 151]

—absence of—

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[I. L. R., 28 Calc., 102]

—rights of—

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COMPLAINT.

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1. INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES . . . 211

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See **FALSE EVIDENCE—CONTRADICTORY STATEMENTS**. . . 8 C. W. N., 840

—retiral of complaint—

See **CRIMINAL PROCEDURE CODE, s. 437.**
[8 C. W. N., 163]

1. INSTITUTION OF COMPLAINT. AND NECESSARY PRELIMINARIES.

1.—**Bigamy—Criminal Procedure Code, s. 195**—*Act I of 1860 (Indian Penal Code), s. 435—Prosecution started at the instance of the second husband's brother—"Person aggrieved."*—*Held* that, in respect of a prosecution for bigamy, the brother of the second (bigamous) husband of the accused was not a "person aggrieved" within the meaning of s. 195 of the Code of Criminal Procedure. *Queen-Empress v. Bai Eshwari (1865), 1 L. R., 10 Bom., 310, followed. EMPRESS v. INTALIA (1902).* . . . I. L. R., 25 All., 132

2.—**—Criminal Procedure Code, s. 195—Act I of 1860 (Indian Penal Code), ss. 434 and 435—Jurisdiction—The husband of a woman who had left him laid a complaint before a Magistrate, alleging facts which seemed to constitute the offence provided for by s. 435 of the Indian Penal Code. In the course of the inquiry consequent upon this complaint it appeared that an offence falling under s. 434 of the Code had been committed, and the Magistrate accordingly made an order of commitment under s. 434 of the Code. *Held* that such commitment was not illegal. It was not necessary that the complainant should specify precisely the section under which the person complained against should be charged, and he had laid before the Magistrate matter which, if proved, would be sufficient to warrant a commitment under s. 434. *In the matter of Ujjala Devi (1878), 1 C. L. R., 523, approved. EMPRESS v. AILI (1902).* . . . I. L. R., 25 All., 209**

3.—**"Complaint"**—*Criminal Procedure Code (Act V of 1902), ss. 4, cl. (b), 190, cl. (c)—Complaint, what—Proceedings instituted on Magistrate's responsibility.*—Where, in a petition presented to a Magistrate, a person alleged that he had been taken to a certain place and there made to sign a paper, but also expressly stated that he did not wish to prosecute. *Held* that there was no complaint, within the terms of the definition in s. 4, cl. (b), of the Criminal Procedure Code, and that no process could be issued upon the petition. Proceedings taken upon such a petition cannot be justified as having been instituted by the Magistrate on his own responsibility under s. 190, cl. (c), of the Code of Criminal Procedure. *MAHARAJA SINGH v. HATHWAY MARDIA (1902).* . . . 6 C. W. N., 928

4.—**Court of Wards—Petition to Collector against subordinate officer of Court of Wards—Journals of petition—Witnesses, opportunity to call—Sanction to prosecute—False charge—Penal Code (Act I of 1860, s. 211—Code of Criminal Procedure (Act V of 1902, ss. 4 (b) and 195—A**

COMPLAINT—continued.**1. INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES—continued.**

petition to the Collector, as the superior officer of the Court of Wards, directed against one of his official inferiors, a subordinate officer of the Court of Wards cutchery, asking the Collector, as the head of the department, to redress the grievances of the petitioner, is not a "complaint" within s. 4, cl. (b), of the Code of Criminal Procedure. Where, on such a petition being presented, the Collector saw the petitioner and got him to repeat the statement made in the petition on oath, and dealing with it judicially as if it were a complaint, dismissed it without giving the petitioner an opportunity of calling his witnesses, and ordered his prosecution under s. 211 of the Penal Code: *Held* that the order for the prosecution of the petitioner under s. 211 of the Penal Code should be set aside, as the Collector was not justified in arbitrarily turning a departmental complaint into a criminal complaint, and that, if he had been justified in taking the course that he did, he should have given the petitioner an opportunity of calling his witnesses and proving his allegations. *JAGOTSYPHOO KARMAR v. EMPRESS (1902).* . . . I. L. R., 30 Cal., 415

5.—**Defamation—Indian Penal Code (Act I of 1860), s. 500—Defamation—Criminal Procedure Code (Act V of 1902), s. 195—Person aggrieved—Defamation of subordinate officers of Municipality—Complaint by President—Municipality—A newspaper published articles which, for the purposes of the point of law to be determined, were assumed to be defamatory. Those related to the conduct of certain subordinate officers of the Madras Municipal Commission. A complaint was lodged by the President of the Commission in respect of the alleged defamation, it being contended on behalf of the complainant that, inasmuch as, by the Madras Municipal Act, the President is responsible for the efficient discharge of their duties by his subordinate officers, his conduct and administration had been impugned by the articles. *Held* that, assuming for the purposes of the question under consideration that the statements complained of were defamatory of the subordinate officers of the Municipal Health Department, they were not defamatory of the complainant; and that the complainant was not a "person aggrieved" within the meaning of s. 195 of the Code of Criminal Procedure. *BEAUCHAMP v. MOORE (1902).***

[I. L. R., 28 Mad., 43]

6.—**Duty of Magistrate—Criminal Procedure Code (Act V of 1902), ss. 190 (c), 191—Cognizance of offence on personal knowledge or information—Final order by same Magistrate—Procedure.**—When a Magistrate takes cognizance of a case under cl. (c) of s. 190, Criminal Procedure Code, he is bound to take further proceedings under s. 191, Criminal Procedure Code; and his omission to do so renders his proceedings illegal. *IS THE MATTER OF ABRAHAM MOORE (1901).* . . . 6 C. W. N., 201

7.—**—Criminal Procedure Code (Act V of 1902), s. 193—Magistrate having power to remove complaint, jurisdiction of, to finally dispose of the same—District Magistrate,**

COMPLAINT—continued.**1. INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES—continued.**

jurisdiction of, to issue process.—A Magistrate having power to receive a complaint has power to deal with it finally, and it is his duty to do so, and a

8.—Police officer—Complaint to police—Report by police—Case ordered to be entered as true by Magistrate—Judicial inquiry—Right of complainant to be examined and to have his case tried—Criminal Procedure Code (Act V of 1898), ss. 173,

receipt of his report he decided to interfere in the

KULDIP SARAIF. BUDHAN WANTON (1901)
[I. L. R., 29 Calc., 410]

8.—Criminal Procedure Code (Act V of 1898), ss. 4 (h), 230—Report of police officer—Complaint by a police officer in a non-cognizable case—False complaint—Compensation

definition of 'complaint' in s. 4 (h) of the Criminal Procedure Code, 1898. Where a police officer appears before a Magistrate and makes a formal

(1901). I. L. R., 29 Calc., 410

10.—Rioting—Criminal Procedure Code (Act V of 1898), ss. 190, 525—Cognizance of offences against persons accused but not sent up for trial—Refusal by trying Magistrate to issue processes against such accused persons—Transfer by District Magistrate of case—Warrants, issue of, against accused not sent up—Pending cases—Jurisdiction.—Where several persons were accused of rioting, and only one of the accused was sent up by the police and convicted of the offence, and the trying Magistrate, on application made for summoning the others, refused to summon them, and the District Magistrate transferred the case to his own file and directed the

COMPLAINT—continued**1. INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES—continued.**

issue of warrants against the accused persons originally charged but not sent up for trial: Held that the

to transfer the case to his own file under s. 525 of the

Magistrate had jurisdiction to take cognizance of the case as against the other accused persons under s. 190 of the Code ATEN MAHMAD AKAND v. KING-EMPEROR (1901) . S. C. W. N., 488

2. DISMISSAL OF COMPLAINT.**(a) POWER OF, AND PRELIMINARIES TO, DISMISSAL.**

11.—Examination of complainant—Criminal Procedure Code (Act V of 1898), ss. 202, 203—Complaint before District Magistrate—Examination of complainant—Order for local inquiry to a Magistrate not competent to take cognizance of the complaint, legality of—Determination of complaint—Penal Code (Act XLV of 1860), s. 211—False charge, prosecution for making—Opportunity given to complainant to establish the truth of his complaint—Preliminary inquiry, whether necessary—Where a Magistrate dismissed a complaint after hearing complainant and considering the results of an investigation held under s. 202:

claimed to have all his witnesses examined by a competent Magistrate: Held that ss. 202 and 203 do not give that right to a complainant whose story is disbelieved by the Magistrate. In a prosecution under s. 211, Indian Penal Code, where the complaint on which the prosecution was founded was dismissed after hearing and the taking of such steps

12.—False charge—Criminal Procedure Code (Act V of

COMPLAINT—continued.**2. DISMISSAL OF COMPLAINT—continued.****(a) POWER OF, AND PRELIMINARIES TO, DISMISSAL—concluded.**

ss. 156, 159, 200, 203—Penal Code (Act XLV of 1890), s. 211—Jurisdiction of Magistrates— A complaint was made to a Magistrate, who, without examining the complainant, sent the petition of complaint, under s. 156 of the Code of Criminal Procedure, to the police, for inquiry, and, upon receipt of the police report, directed a Sub-Deputy Magistrate to make a preliminary inquiry into the case under s. 159 of the Code, and, on receipt of his report, the Magistrate, not being satisfied with it, cross-examined the complainant and some of his witnesses, examined some witnesses sent up by the police, and then dismissed the complaint under s. 203 of the Code, and directed the prosecution of the complainant under s. 211 of the Penal Code. *Held* that the order dismissing the complaint was illegal, the Magistrate having no jurisdiction to deal with the case or dismiss it under s. 203 of the Criminal Procedure Code without complying with the requirements of the law as laid down in ss. 200 and 202 of that Code. *LOKESHATH PATHA v. SATTARI (MADRAS JUDGE) (1903)*

[I. L. R., 30 Cal., 923;
s.c., 7 C. W. N., 535.

(b) EFFECT OF DISMISSAL.

13.—Dismissal for absence of complainant—*Removal of and further inquiry into case by same Magistrate—Review—Code of Criminal Procedure (Act V of 1898), ss. 253, 269, 437 and 439.*—Complainant filed a complaint under s. 341, 323, 447 and 426 of the Penal Code. The District Magistrate, after recording the statements of the complainant, ordered the issue of a summons to the accused, returnable on the 19th April. On that day the complainant was absent when the case was called on. The District Magistrate dismissed the case under s. 253 of the Code of Criminal Procedure. Subsequently, on the application of the complainant, the District Magistrate revived the case and made it over to an Honorary Magistrate for trial. *Held* that the terms of s. 360 of the Code of Criminal Procedure must be read as controlled by s. 437 of that Code. S. 437 does not limit the power of a District Magistrate to make a review.

Magistrate to have an order passed by a bar to a jury into a passed by SURESH
[I. L. R., 25 Cal., 102

14.—Revival of proceedings—Discharge of accused—Re-arrest of accused without previous order of discharge being set aside—Code of Criminal Procedure (Act V of 1898), ss. 252, 253, 403, 436 and 437—Indian Post Office Act (VI of 1899), s. 52.—There is no express provision in the Code of Criminal Procedure to the effect that the dismissal of a complaint shall be a bar to a fresh

COMPLAINT—continued.**2. DISMISSAL OF COMPLAINT—continued.****(b) EFFECT OF DISMISSAL—continued.**

complaint being entertained so long as the order of dismissal remains unreversed. An accused person was arrested on the charge of having stolen a registered letter from the Post Office, and was brought up before a Bench of Presidency Magistrates, charged with offences under s. 391 of the Penal Code and s. 52 of the Post Office Act, 1838. He was discharged on the same day, the Bench considering the evidence insufficient. Subsequently the accused was re-arrested on substantially the same charge, and was committed by the Chief Presidency Magistrate for trial upon further and fresh evidence. Upon an application by the accused, to have the order of commitment discharged on the ground that the Chief Presidency Magistrate had no jurisdiction to make the commitment, as the previous order of discharge had not been set aside: *Held* that the commitment was good. *Nelraon Sen v. Jogesh Chandra Bhattacharjee (1906), I. L. R., 23 Cal., 953, distinguished. Grish Chander Roy v. Dwarka Dass Agarwallah (1907), I. L. R., 24 Cal., 628, distinguished from Ogoorba Kumar Sait v. Trobed Kumary Dass (1903), I. C. W. N., 49, followed. QUEEN-EMRESS v. BOLGOSHD DASS (1900)*

[I. L. R., 28 Cal., 211;
s.c., 6 C. W. N., 169

15.—Criminal Procedure Code (Act V of 1898), s. 203—Refusal by Magistrate to take cognizance of case—Subsequent trial by him.—A complaint was laid in the Court of a Town Magistrate, charging certain persons with having committed offences under the Registration Act. The Town Magistrate dismissed the complaint on the ground that sanction, which he deemed to be necessary, had not been obtained. The complainant obtained sanction, and thereupon the Town Magistrate proceeded with the case and convicted the accused. On appeal, the Deputy Magistrate, while agreeing that the accused were guilty, reversed the conviction on the ground that, inasmuch as the Town Magistrate had once thrown out the complaint under s. 203 of the Code of Criminal Procedure, he could not subsequently entertain it. On the case

(1900) I. L. R., 24 Mad., 337

16.—Complaint accusing several persons—Proceedings, institution of, against one—Conviction—Refusal by Magistrate to proceed against other persons accused—Further inquiry—Notice—Criminal Procedure Code (Act V of 1898), ss. 203 and 437.—A complaint was made to a Magistrate, charging several persons with the commission of an offence. The Magistrate instituted proceedings only against one of them, and after his conviction refused to issue process against the others. On application by the complainant, the

COMPLAINT—concluded.**2. DISMISSAL OF COMPLAINT—concluded.****(b) EFFECT OF DISMISSAL—concluded.**

Sessions Judge, under s. 437 of the Criminal Procedure Code, directed a further inquiry into the matter without notice to the other persons accused. Held that the refusal by the Magistrate to issue process was an order of dismissal of the complaint within

Code directing a further inquiry into a matter which has terminated in the summary dismissal of a

COMPOSITION-DEED.

See INSOLVENT ACT (11 AND 13 VICT., c. 21), ss. 9 AND 24

[I. L. R., 28 Bom., 765]

COMPOUNDING OFFENCE.

—Compoundable offence—Whether the compounding of an offence entitles to the acquittal of all the parties complained against—It, in the case of a compoundable offence, the complainant intimates to the Court that he has compounded it and desires to withdraw his complaint, the order passed by the Magistrate allowing the withdrawal is in respect of the offence and not solely in regard to the persons

Where, out of several persons named in the complaint, the Magistrate issued process against one, and

COMPROMISE.

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|---|---------|
| 1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE | Col 218 |
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COMPROMISE—continued.

See DECREE—ALTERATION OR AMENDMENT OF DECREE . . . 7 C. W. N., 890

See ESTOPPEL—ESTOPPEL BY CONDUCT [I. L. R., 29 Calc., 577]

See EXECUTION OF DECREE—EXECUTION ON OR AFTER AGREEMENTS OR COMPROMISES.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—COMPROMISE [I. L. R., 25 All., 48]

See REGISTRATION ACT, 1877, s. 17. [I. L. R., 25 Mad., 553]

—of suit, power to make—

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION [I. L. R., 24 Mad., 320]

See COUNSEL . . . 6 C. W. N., 82

—out of Court—

See CIVIL PROCEDURE CODE, s. 244—QUESTIONS IN EXECUTION OF DECREE [7 C. W. N., 54]

1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE.

1.—Compromise in previous suit—A compromise entered into by the parties in a previous

general rule as mentioned therein. **RAMESHWAR PROSAD SINGH v. LACHMI PROSAD SINGH** (1903) [7 C. W. N., 688]

2.—Joint family—Joint Hindu family—Effect of conversion of member of joint Hindu family to Mahomedanism—Regulation VII of 1832, s. 9—Title taken under compromise between persons having mutually exclusive claims—In the year 1845 one Ratan Singh, who at that time formed with his son Gaurat Singh a joint Hindu family, possessed as such of considerable property, both movable and immovable, became converted to Mahomedanism. In 1851 Ratan Singh died, his son Paulat Singh having predeceased him, and such portion of the property as was situate in British India was taken over by the Court of Wards and held by them apparently on behalf of Raj

Kunwar executed a bond for a considerable sum of money in favour of Jai Chaud, the father-in-law of her daughter, Meena Kunwar. Son Kunwar died in 1857, and Raj Kunwar in 1859. After the death

COMPROMISE—continued.**1 CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE—continued.**

of these ladies three claimants to the property

assigned to the daughters of Daulat Singh and 7½ annas to Khairati Lal; and in 1801 the partition of the property in accordance with the terms of the compromise was completed. In 1806 Chatar Kunwar died, and upon her death Mewa Kunwar successfully asserted her right by survivorship to the 4½ annas which had been the share of her sister, and thus became possessed of the whole 8½ annas assigned by the compromise mentioned above to the daughters of Daulat Singh. Meanwhile, however, Jai Chand had brought a suit upon the bond given to him in 1837 by Sen Kunwar. Why this bond was originally executed did not appear, nor that there was evidence of any such legal necessity pressing upon Sen Kunwar as would have supported an incumbrance of more than her own life interest in the property. The final decree in this suit was obtained by Jai Chand in 1868, that is to say, after the surviving defendant, Mewa Kunwar, had been declared entitled to the entire 8½ annas share; and it was a decree based upon a confession of judgment by Mewa Kunwar. In satisfaction of this decree certain villages, part of the said 8½ annas share, were made over to the decree-holder, some of which, in turn, were sold by him to various vendees. On the suit by the sons of Mewa Kunwar to recover some of these villages on the ground that their mother had in them no more than a Hindu daughter's

the property so becoming vested in Daulat Singh

COMPROMISE—continued.**1 CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE—continued.**

shown for the making of Sen Kunwar's bond or for the relinquishment by Mewa Kunwar of the villages which she made over to Jai Chand in satisfaction of his decree upon that bond, the estate taken by Jai Chand could not be more than that possessed by Mewa Kunwar, and on her death her sons were entitled to recover possession. *Abraham v. Abraham* (1863), 9 Moo. L. A., 129, at page 237, referred to. Held also that, although the findings in the case between Mewa Kunwar and her brother-in-law (N. W. P. H. C. Rep., 1868, p. 62) could not be held to be res judicata in the present appeal, the judgment in that case could be used as evidence to the extent pointed out in the case of *Ram Nanjan Chakraborty v. Ram Narain Singh* (1891), L. R., 22 I. A. 100, 101.

3.—Minor—Guardian of minor—Proper course to set aside a compromise decree—Appeal Adoption, suit to set aside—Guardians and Wards Act (VIII of 1890), ss. 47, 48—Civil Procedure Code (Act XIV of 1859), ss. 443, 623.—When a compromise and a decree based upon it are sought to be set aside on the ground that the compromise was entered into by the guardian of a minor defendant without the leave of the Court having

a separate suit, but not by an appeal from the compromise decree. *Biraj Mahini Dasi v. Chinta Moni Dasi* (1901), 6 C. I. F. N., 577, followed. S. 43 of the Guardians and Wards Act does not prevent a widow, who has been appointed by the District Judge under that Act, guardian of a minor as her husband's adopted son, from maintaining a suit for a declaration that the minor was not the adopted son of her husband. *RAKHAL MONI DAS v. ADWITA PRASAD ROY* (1903)

[L. L. R., 30 Cal., 613; s. c., 7 C. W. N., 419]

4.—Specific performance—Specific performance, suit for—Civil Procedure Code (Act XIV of 1859), s. 211—Right of suit—Limitation Act (XI of 1877), Sch. II, Art. 113—Estoppel.—When a previous suit for khas possession was compromised and dismissed, defendant agreeing to execute a *kabuliyat* in plaintiff's favour; and plaintiff sued again for specific performance of the contract to execute the *kabuliyat*, there being no direction for its execution in the decree in the previous suit: Held that the present suit was not barred under s. 244 of the Civil Procedure Code. Where, after *kabuliyat*, is entitled plaintiff defendant

COMPROMISE—continued

3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—continued.

be regarded as *ultra vires* simply because it goes beyond the subject-matter of the suit and contains other conditions. The other conditions, if they are the considerations for the compromise of the subject-matter of the suit, must be incorporated in the decree; but, if the other conditions are independent of it, they may be regarded as surplusage. *PERA CHANDRA SARKAR v. NIL MADHUR NANDI* (1931)

[5 C. W. N., 485

10. —Minor—Compromise on behalf of minor—Compromise of execution proceedings—Civil Procedure Code (XII of 1882), s. 462—Sanction of Court—Form of sanction—Minority—Burden of proof.—The plaintiffs, Shilappa and Basappa, both of whom were alleged to be minors, sued in 1895, by their mother and next friend, for partition, and obtained a decree on the 21st December, 1897. They subsequently applied for execution, but on the 13th June, 1904, Shilappa, describing himself as then of age, and Basappa, by his mother and next friend, got this application struck off the file, on the ground that they had compromised with the defendant and that the decree was satisfied. The compromise (*farkhat*) was executed by the first plaintiff himself, who, as alleged in the *farkhat*, had then at-

s. 462 of the Civil Procedure Code. The lower Court held (1) that both plaintiffs were minors, and (2) that the compromise had not been sanctioned as required by s. 462. It therefore set aside the compromise, and passed a decree for the plaintiffs. On appeal by the defendant; *Held* that, Shilappa (plaintiff No. 1) having described himself both in the former suit and in the *farkhat* as of age, the burden of proof now lay upon him to show that he was a minor, and that he had failed to do so. But *held* also (dismissing the appeal) that, Basappa (plaintiff No. 2) being a minor, the *farkhat* required the sanction of the Court under s. 462 of the Civil Procedure Code. That sanction had not been given. The Court had not before it the materials necessary to enable it to arrive at a judicial conclusion with respect to the compromise. It did not appear that the terms of the *farkhat* were before it, or any evidence as to its propriety or reasonableness. S. 462 of the Civil Procedure Code, therefore, had not been complied with. The form of expression used for the purpose

COMPROMISE—continued.

3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—continued.

ture Code applies to a compromise of execution proceedings. *VIRUPAKSHAPPA v. SHIDAPPA* (1901)

[1 L. R., 20 Bom., 109

11. —Minor—Civil Procedure Code (Act XII of 1882), s. 462—Compromise on behalf of minor—Certificated guardian, authority of—Whether compromise, upon which decree given, requires Court's sanction—Construction and meaning of words—Leave of Court, nature of, if must be express—Leave, granted by certificated guardian, when valid—Registration—Decree, if can validate unregistered lease—Holder of a valid lease, acceptance of, by certificated guardian—Trespasser—Ejectment—Notice.—S. 462, Civil Procedure Code, requires every person acting as a next friend or guardian for the suit to a minor to take the leave of the Court before entering into an agreement or compromise on his behalf, and no exception is made in the case of a certificated guardian. The policy of the law being to protect minors from being taken at a disadvantage by their guardians, the leave of the Court is required, not only in the case of such agreements as are entered into out of Court, but also in the case of agreements which are given effect to by a decree of the Court. The words "any agreement or compromise with reference to the suit," in the

leave of the Court must be express, and it must be arrived at upon the exercise of a judicial discretion as to the propriety of compromise in the interests of the minor. *Kalarati v. Chedi Lal* (1895), 1 L. R., 17 All. 531; *Sarat Chandra Ghose v. Kartik Chander Mitter* (1892), 1 L. R., 9 Cal., 810, relied on. Where a certificated guardian, acting as next friend to a minor in a suit, entered into a compromise with the defendant, without the Court's leave, whereby it was agreed that the defendant should obtain a *mokurari* lease in respect of certain lands belonging to the minor, and the Court gave a

to grant leases on behalf of the minor, the lease in question, not having been granted by a registered instrument, was invalid; and the compromise decree which the minor, under the express authority of the law, sought to avoid, could not be invoked as a substitute for a duly-registered lease. *Held* also that, the certificated guardian having accepted defendant as a tenant, the defendant could not be

COMPROMISE—concluded**3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—concluded.**

considered a trespasser, the invalidity of the original lease and the compromise decree notwithstanding; and therefore could not lawfully be evicted without notice. *LALA MAJLIS SARAI v. NARAIN BIRI* (1932) 7 C. W. N., 80

12.—Partition—Civil Procedure Code, s. 373

—*Suit for partition—Withdrawal of suit—Joint petition by parties praying that the suit might be struck off—Subsequent suit for partition barred.*—The plaintiff and the defendants in a suit for partition, having arrived at a compromise, presented to the Court a joint petition asking that the suit might be struck off (*Aharij kardiya jawe*). The Court passed orders accordingly, in the terms of the petition, striking off the suit. The terms of the compromise were not, however, inserted in the decree, and

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CONCUBINE

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—CONCUBINE.

CONCURRENT JUDGMENTS ON FACTS.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—

CONCURRENT JUDGMENTS ON FACTS;

SUBSTANTIAL QUESTIONS OF LAW.

[*L. L. R.*, 25 Mad., 216

See PRIVY COUNCIL, PRACTICE OF—CONCURRENT JUDGMENTS ON FACTS

CONDITION.

—breach of—

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS

CONDITIONAL SALE.

See EVIDENCE—PAROL EVIDENCE.

[*L. L. R.*, 28 Calc., 256, 289

See MORTGAGE.

CONDUCT.

See ESTOPPEL—ESTOPPEL BY CONDUCT.

CONFESSION.

Col.

1. *CONFESSIONS SUBSEQUENTLY RETRACTED.* 216

2. *CONFESSIONS TO MAGISTRATE!* 227

3. *CONFESSIONS TO POLICE OFFICERS.* 229

4. *CONFESSION OF PRISONERS TRIED JOINTLY*

—*confessions of prisoners tried jointly—*

See JOINDER OF CHARGES

[*5 C. W. N.*, 294

—*confessions to Magistrate—*

See TRANSFER OF CRIMINAL CASE—

GROUND FOR TRANSFER.

[*5 C. W. N.*, 864

1. CONFESSIONS SUBSEQUENTLY RETRACTED.

1.—*Evidence—Retracted confession—Evidence Act (1 of 1973), s. 24—A confession duly recorded and not admissible in evidence.*

2.—*Retracted confession, evidential value of, against maker and co-accused—Corroboration—A retracted confession should carry practically no weight as against a person other than the maker, it is not made on oath, it is not tested by cross-examination, and its truth is denied by the maker.*

3.—*Confession at variance with the evidence, conviction on—Circumstances under which it is made—The prisoner, a young girl of 15, being*

4.—*Confession at variance with the evidence, conviction on—Circumstances under which it is made—The prisoner, a young girl of 15, being*

5.—*Confession at variance with the evidence, conviction on—Circumstances under which it is made—The prisoner, a young girl of 15, being*

6.—*Confession at variance with the evidence, conviction on—Circumstances under which it is made—The prisoner, a young girl of 15, being*

7.—*Confession at variance with the evidence, conviction on—Circumstances under which it is made—The prisoner, a young girl of 15, being*

8.—*Confession at variance with the evidence, conviction on—Circumstances under which it is made—The prisoner, a young girl of 15, being*

9.—*Confession at variance with the evidence, conviction on—Circumstances under which it is made—The prisoner, a young girl of 15, being*

10.—*Confession at variance with the evidence, conviction on—Circumstances under which it is made—The prisoner, a young girl of 15, being*

11.—*Confession at variance with the evidence, conviction on—Circumstances under which it is made—The prisoner, a young girl of 15, being*

12.—*Confession at variance with the evidence, conviction on—Circumstances under which it is made—The prisoner, a young girl of 15, being*

13.—*Confession at variance with the evidence, conviction on—Circumstances under which it is made—The prisoner, a young girl of 15, being*

14.—*Confession at variance with the evidence, conviction on—Circumstances under which it is made—The prisoner, a young girl of 15, being*

15.—*Confession at variance with the evidence, conviction on—Circumstances under which it is made—The prisoner, a young girl of 15, being*

CONSPIRACY.

See ABETMENT. I. L. R., 24 Mad., 523

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1.—Evidence—Relevant fact—Evidence Act (I of 1872), s. 10—Conspiracy, evidence of—Statements by an alleged conspirator to a third party, relevancy of—Statements made by an alleged conspirator to a third party, suggesting that there had been a conspiracy between the plaintiff and others in connection with the forgery of an alleged will, are not relevant when such statements are used to prove (a)

consists in a combination and agreement by persons to do some illegal act or to effect a legal purpose by illegal means, and the conspiracy is complete if two or more than two should agree to do an illegal thing. When it is shown that there is reasonable ground to believe that two or more persons have conspired together to commit an offence, anything said, done or written by any one of such persons in reference to their common intention may be proved both for the purpose of proving the existence of the conspiracy as also for showing that any such person was a party to it. Conspiracy is not a substantive offence in India, but is incorporated in the law of abetment of offences. In order to constitute the offence of abetment by conspiracy, there must be a combining together of two or more persons in the conspiracy, and an act or illegal omission must take place in pursuance of that conspiracy and in order to the doing of that thing. It is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused. Nor is it necessary that the abettor should concert the offence with the person who commits it. It is sufficient, if he engages in the conspiracy in pursuance of which the offence is committed. *KALIL MUNDA v. KING-EMPEROR* (1901)

(I. L. R., 28 Cal., 787)

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1. CONTEMPT GENERALLY.

1.—District Court—Civil Procedure Code (Act XII of 1852), s. 497—Disobedience to injunction issued by District Court—Powers of District Court—Court of Record.—A District Court is not a Court of Record, and as such has no inherent power to commit for contempt. The jurisdiction of the District Court to commit for contempt is conferred by the Civil Procedure Code (Act XII of 1852), s. 497. It is set in motion by a party who deems himself aggrieved. *KOCHAPPA v. DACHI DEVI* (1902)

(I. L. R., 26 Mad., 484)

2. PENAL CODE, s. 174.

3.—Land acquisition—Indian Penal Code (Act XLV of 1860), ss. 173, 177—Land Acquisition Act (I of 1894), ss. 9, 10—Code of Criminal Procedure (Act V of 1893), s. 203—Giving false information to a public servant, whether furnishing of correct statements as to names and interests of persons, amounts to—Contempt of Court, whether non-attendance in Court in obedience of summons to attend Court, amounts to—Notice to persons interested in lands of intention of Government to take lands for public purposes—Joint trial—A Deputy Collector made a complaint against

statements upon which he desired to proceed; and the Magistrate issued processes for the attendance of the accused to answer a charge under s. 177, Indian Penal Code, and s. 10 of the Land Acquisition Act. On the day fixed for trial the lessee appeared, and appearance was made on behalf of the lessor by his mukhtar, who asked the Magistrate, under s. 205 of the Code of Criminal Procedure, to dispense with the personal attendance of that accused, which the Magistrate refused to accede to, and called upon him to show cause why he should not be prosecuted for contempt of Court under s. 174, Indian Penal Code. Held that, in the absence of the written statements on which the proceedings were founded, and in the absence of any reference as to the particular statement or statements

CONTEMPT OF COURT—concluded**2. PENAL CODE, s. 174—concluded.**

though not a personal appearance on service of summons, and his having moved the superior Courts against the proceedings of the Magistrate, his action being still before the High Court in respect of law

being still before the High Court in respect of law

Durga Das BARNIT v. UMESH CHANDRA SEN
(1900). 5 C. W. N., 131

3.—Vakil—Professional misconduct—Munsif, jurisdiction of—Disobedience of order.—A Munsif called upon a vakil to show cause on the 23rd November why a report should not be made against him to the High Court for gross professional misconduct. On the same date the vakil put in a written explanation, and the matter was ordered to be put up on the 6th December for orders. On the 6th December the vakil did not appear. Later, on the 20th December, a proceeding was drawn up for the prosecution of the vakil under s. 174, Indian Penal Code.

ingly set aside. *Mera hind hind with the vakil*

to take proceedings against the vakil in the way he did in the matter of **PROKASH CHUNDER SARKAR** (1903). 7 C. W. N., 797

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See **BENGAL MUNICIPAL ACT (III of 1884)**, ss 270, 271, 353. 6 C. W. N., 167

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CONTRACT.

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1. **CONSTRUCTION OF CONTRACTS**. 235

2. **WAGERING CONTRACTS**. "

3. **ALTERATION OF CONTRACTS—**

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4. **BREACH OF CONTRACT**. "

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See **TITLE—EVIDENCE AND PROOF OF**
TITLE—GENERALLY.

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—alteration of—

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(I. L. R., 25 Bom., 816)

—breach of—

See **ACT—1850—XIII.**

See **BREACH OF CONTRACT.**

See **BROKER**. I. L. R., 30 Calc., 202

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(I. L. R., 30 Calc., 865)

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DAMAGES—BREACH OF CONTRACT.

See **JURISDICTION—CAUSES OF JURISDIC-**
TION—CAUSE OF ACTION—BREACH OF
CONTRACT

See **LIMITATION ACT, 1877**, SCH II, ART
116. I. L. R., 25 Mad., 587

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—breach of, by decree-holder—

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(I. L. R., 28 Calc., 557)

—evidence of—

See **TRANSFER OF PROPERTY**

(I. L. R., 28 I. A., 49)

—formation of—

See **RAILWAY COMPANY.**

(I. L. R., 37 Bom., 126)

—illegal—

See **CONTRACT ACT, s 23.**

—implied—

See **CRIMINAL BREACH OF TRUST.**

(6 C. W. N., 203)

—in derogation of decree—

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CONTRACT—continued.**—liability of minor on—**

See ESTOPPEL—ESTOPPEL BY CONDUCT.
[I. L. R., 30 Cal., 539]

—privity of—

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OF AGENTS. I. L. R., 24 Mad., 130

—running with the land—

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[I. R., 30 I. A., 238]

—validity of—

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—wagering—

See CONTRACT ACT, ss. 20, 30 AND 63.
[I. L. R., 25 Mad., 561]

1. CONSTRUCTION OF CONTRACTS.

1.—Maintenance—Gifts for maintenance—
Construction—*Prima facie* gifts for life—Gifts or
contracts expressed to be for maintenance, and
indefinite as regards duration, may be shown by the
acts of the parties or other circumstances to be
intended to operate in perpetuity; but *prima facie*

563; 6 C. W. N., 1

2. WAGERING CONTRACTS.

2.—“Badni” transaction—Barden of proof—
Act IX of 1872 (Indian Contract Act), s. 30.

3.—Differences—Gambling transactions—
Contract Act (IX of 1872), s. 30—Contracts for
sale and purchase of goods without intention to

CONTRACT—continued.**2. WAGERING CONTRACTS—concluded.**

to pay or receive money between one another accord-
ing as the market price of the goods should vary from

Act, XXI of 1818, and the expression “by way of
wager” used in s. 30 of the Indian Contract Act (IX
of 1872). Transactions for the purchase and sale of
goods comprised two classes of contracts—the one
class, suitable to traders, such as the defendants were,
and all duly fulfilled by delivery and payment, and
the other class extravagantly large and left without
any attempt at fulfilment. *Held* that the inference
was that in the latter class the parties never intended

The Universal Stock Exchange v. Strachan (1896).
A. C., 166, referred to KONO YU LOVE & CO. v.
LOWEY NANSER 1901)
[I. L. R., 29 Cal., 461; a.c., 5 C. W. N., 714;
I. R., 28 I. A., 239]

4.—Principal and agent—Act IX of
1872 (Indian Contract Act), s. 30—Contract
collateral to a wagering contract not unenforce-
able.—Although, by reason of s. 30 of the Indian
Contract Act, 1872, a wagering contract is void, a
contract collateral to such a contract is not neces-

amounts to a request by the principal to the agent
to pay the amount of the losses, if any, on those
wagering transactions. *Parakh Gorardhanhai*

5.—Act IX of 1872 (Indian
Contract Act), s. 30—Principal and agent
Suit by principal to recover from agent
money received on account of a wagering contract.

3 ALTERATION OF CONTRACTS.**(a) ALTERATION BY PARTY.**

8.—Mortgage—Suit for sale after redemption of
a prior mortgage—Bond held by prior mortgagee

CONTRACT—continued.**3. ALTERATION OF CONTRACTS—continued.****(a) ALTERATION BY PARTY—continued.**

found to have been altered in a material particular—**Effect of such alteration**—A pious mortgage brought a suit for sale against his mortgagors on two mortgages, and impleaded therein as defendants the heirs of a prior mortgagee. As to this prior mortgage, the plaintiff stated in his plaint:—"The plaintiff has now learnt that the defendant No. 1, Tajammul Hasain Khan, had made a prior mortgage of a four biswa share in mauza Saiyid Nagar alias Nayagaon, paigana Bilari, to Bhagwan Das under a registered bond, dated the 7th August, 1886, for Rs. 1,000. Bhagwan Das is dead. The defendants

Nos 3 to 6, the plaintiff may be asked to pay that sum; and the entire hypothecated property may be sold by auction, and the whole amount of the prior incumbrance which the plaintiff might have to pay, and also the entire amount claimed, and costs and

produced, was found to have been tampered with and altered in a material particular, the extent of the share mortgaged having been increased. *Held by STANLEY, C.J., and BANERJI, J. (dissentiently AITMAN, J.),* that such alteration did not render the instrument void *in toto* so as to justify a Court in ignoring its existence and passing a decree in favour of the plaintiff for sale of the property comprised in it without payment of the amount due under it, or any part of that amount. An interest in immovable property having become vested by the

rayya (1885), 1 I. L. R. 9 Mad. 399; *Ramatsung Kon v. Bharani Ayyar* (1866), 3 Mad. H. C. Rep. 247; *Suffell v. Bank of England* (1882), 9 Q. B. D. 553; *Subrahmanya Ayyan v. Krishna Ayyan* (1899), 1 I. L. R. 23 Mad. 137; *Beaumont v. Hirst* (1821), 23 R. R. 788; *Hatchins v. Scott* (1837), 46 R. R. 770; *Stewart v. Aulton* (1858), 8 Ir. C. L. R. 35; *Browne v. Lockhart* (1840), 10 Sim. 420; *Chichester v. Marquis of Donegall* (1870), L. R. 5 Ch. 497; and *Kennedy v. Green* (1833), 6 Sim. 6, referred to. *West v. Stewart* (1843), 11 M. and W. 47, and *Agricultural Cattle Insurance*

CONTRACT—continued.**3. ALTERATION OF CONTRACTS—concluded.****(a) ALTERATION BY PARTY—concluded.**

Company v. Fitzgerald (1851), 16 Q. B. 432, also referred to by BANERJI, J. *Held by AITMAN, J.,* that, the mortgage-deed of the 7th August, 1886, being the sole admissible evidence of the rights of the prior mortgagee in respect thereof, and that instrument containing a material and unexplained alteration, the prior mortgagee could neither sue upon it nor use it as a defence to the action brought by the pious mortgagee *Crookston v. Fletcher* (1861), 11 M. and W. 602. *Held by STANLEY, C.J.,*

the cases mentioned above. *MANGAL SEN v. SHANKAR SARKI* (F.B. 1903), 1 I. L. R., 25 All. 580

(b) ALTERATION BY THE COURT (INEQUITABLE CONTRACTS).

7.—*Undue influence—Sale—Inadequacy of consideration—The latter not conclusive—Contract not void*

4. BREACH OF CONTRACT.

8.—*Delivery—Damages, measure of—Delivery, specific, period for—Seller's option—Notice of*

[I. L. R., 30 Calc., 477; *see*, 7 C. W. N., 431]

9.—*Re-sale or rejection—Right of re-sale—Contract Act (IX of 1872), s. 117—Inferiority of quality—Right to reject—Proprietary right, exercise of—Damages—When there is anything in the contract to the contrary, a buyer cannot be compelled to take goods with an allowance for inferiority of quality. If the right to reject the goods as being of an inferior quality is not reserved by the buyer when the goods are traded, but a right of a proprietary character in respect of the goods is exercised by directing delivery to be made to third parties then the buyer accepts the goods, and, if they remain in the possession of the seller, then the latter*

CONTRACT—concluded.**4. BREACH OF CONTRACT—concluded.**

a lien upon them, and is entitled, under s 107 of the Contract Act, to re-sell the goods and recover as damages the difference between the contract price and the price at the re-sale. **HARIDAS KHANDELWAL v. KALMULL (1903)** . 7 C. W. N., 562; a.c. [I. L. R., 30 Calc., 649]

CONTRACT ACT (IX OF 1872).**See CONTRACT.****—s. 11—**

See ESTOPPEL—ESTOPPEL BY CONDUCT.
[I. L. R., 30 Calc., 539]

—s. 16—

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY THE COURT (INEQUITABLE CONTRACTS)
[I. L. R., 25 Bom., 126]

—s. 18—

See ESTOPPEL—ESTOPPEL BY CONDUCT.
[I. L. R., 30 Calc., 539]

—ss. 20, 30 and 65—

—Advance on risk (yogyam) of ship—Marine insurance—Contract by way of wager—In a document, dated 3rd August, 1896, signed by defendants and addressed to plaintiff, it was recited that plaintiff had lent a sum of money to defendants on the risk or security ("yogyam") of a ship belonging to defendants "now under sail to the Nicobars" from Negapatam; and the defendants stipulated that "as soon as the said ship starts for and reaches the Nicobar Isles and thence sets sail and goes to Rangoon, Moul-

CONTRACT ACT (IX OF 1872)—continued.**—s. 23—**

See HINDU LAW—HUSBAND AND WIFE.
[I. L. R., 28 Calc., 761]

See INJUNCTION—UNDER CIVIL PROCEDURE CODE. . I. L. R., 25 All., 431

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ILLEGAL CONTRACTS—(a) **GENERALLY** 240(b) **AGAINST PUBLIC POLICY** "**ILLEGAL CONTRACTS.****(a) GENERALLY.**

—Abkari Act (Mad. Act I of 1856), s. 24 (c)—
License to sell arrack, issued under the Act—Rule contained in license, imposing duty on licensee to obtain Collector's permission to sub-let—Agreement to sub-let and sell arrack to sub-lessee

should sell arrack in plaintiff's licensed shop, and that plaintiff should supply the liquor to be sold. Rule 21 of plaintiff's license imposed a duty on plaintiff to obtain the sanction of the Collector in case he should sub-let. Neither plaintiff nor defendants obtained such sanction. On a suit being filed

(b) AGAINST PUBLIC POLICY.

—Consideration opposed to public policy—Parents making profit for themselves out of the marriage of their daughter—Act IX of 1857, Sch. II, cl. (33)—Small Cause Court suit—The parents of a girl caused her to enter into an utterly unsuitable marriage, the husband agreeing to pay a certain sum monthly for the maintenance of the parents. On suit by the mother to recover certain instalments of the maintenance so promised, it was held (1) that the suit was one not cognizable by

referred to **BALDEO SAAH v. JYUNA KUNWAR (1901)** I. L. R., 23 All., 495

—s. 30—

See ante, ss. 20, 30 and 65

See CONTRACT—WAGERING CONTRACTS.

vanted. Held that he was not entitled to recover. The risk which formed the basis of the agreement, according to its true construction, commenced from the 23rd July, 1896, as set out in the document, because it was on that day that the vessel sailed from port and commenced to incur the perils of the deep. The agreement was consequently not void under s 20 of the Contract Act, nor were the defendants bound, under s 65 of that Act, to restore to plaintiff the sum they had received under its terms. Such an agreement could not be held to be in any sense a policy of marine insurance. **Per DAVIES, J.**—The suit should be dismissed, under s 30 of the Contract Act, on the further ground that the agreement was one by way of wager. **VAPPAKANDU MARAKAYAR v. ANNAMALAI CHETTI (1901)** . I. L. R., 25 Mad., 581

CONTRACT ACT (IX OF 1872)—continued.

—s. 43—

See CIVIL PROCEDURE CODE, s 153
[I. L. R., 25 Bom., 378]

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See MORTGAGE—SALE OF MORTGAGE PRO-
PERTY—RIGHTS OF MORTGAGERS
[I. L. R., 30 Calc., 953]

—s. 45—

See REPRESENTATIVE OF DECEASED PER-
SON . . . I. L. R., 25 Mad., 385

—s. 51—

—Contract—Suit for damages for breach of con-

ready and willing to carry out their part of the

SURESH RAM KUPHAM v. MADANGOPAL GOWARDHAN
(P.C. 1903) . . . I. L. R., 30 Calc., 885

—s. 63—

—Evidence Act (I of 1872), s 92, proviso 4—
Registered document—Subsequent oral agreement
—Remission of portion of promise—Discharge in
full on receipt of portion of amount due—Evidence
of oral agreement.—In a suit for two years' rent,
due under a registered lease, defendant pleaded a
subsequent oral agreement by plaintiff to remit a
portion of the rent each year, and filed a receipt
by which plaintiff accepted payment at the reduced
rate in full discharge in respect of one of the years.
Held that though, under proviso 4 to s. 92 of
the Evidence Act, evidence of such an agreement was

—s. 64—

See ESTOPPEL—ESTOPPEL BY CONDUCT.
[I. L. R., 33 Calc., 539]

—s. 65—

See ante, ss 20, 30 AND 65
See ESTOPPEL—ESTOPPEL BY CONDUCT.
[I. L. R., 30 Calc., 539]
See INSURANCE—LIFE INSURANCE.
[I. L. R., 26 Mad., 183]

CONTRACT ACT (IX OF 1872)—continued

—s. 65—concluded.

—Act XV of 1877 (Indian Limitation Act),
Sch. II, Art 97—Agreement to sell—Suit for spec-
ific performance—Agreement declared unenforce-
able—Alternative claim for refund of considera-
tion paid thereunder—Limitation.—The defen-
dants, against whom a decree for foreclosure was
outstanding, agreed to sell certain immovable prop-
erty to the plaintiff, and the plaintiff paid into

the defendants, claiming in the alternative either
a decree for specific performance of the agreement to
sell or a refund of the money paid by him as part of
the consideration for the sale agreed upon. The
Court of first instance gave the plaintiff a decree for
specific performance of the agreement to sell the property.

on failure of consideration was governed as to limita-
tion by Art. 97 of the second Schedule to the

MINHATULLA (1903) . . . I. L. R., 25 All., 618

—s. 68—

• See CONTRIBUTION, SUIT FOR—CO-SHAR-
ERS, LIABILITY OF. 8 C. W. N., 903
See HINDU LAW—MARRIAGE—CEREMON-
IES . . . I. L. R., 23 Mad., 497
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[8 C. W. N., 336]

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[I. L. R., 26 Bom., 504]

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[I. L. R., 30 Calc., 794]

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See MONEY HAD AND RECEIVED.
[I. L. R., 25 Mad., 548]

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[I. L. R., 24 All., 504]

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OF JOINT DEBT BY ONE DEBTOR
[I. L. R., 26 Mad., 323]

—ss. 151, 152, 161—

See **RAILWAYS ACT (IX OF 1890), s. 72**
[I. L. R., 30 Calc., 257]

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See **LIMITATION ACT, 1877, SCH II, ART**
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See **PRINCIPAL AND AGENT—REVOCA-**
TION . . . I. L. R., 30 Calc., 285

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See **DECLARATORY DECREE, SUIT FOR—**
SUITS CONCERNING DOCUMENTS.
[I. L. R., 29 I. A., 203]

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See **PRINCIPAL AND AGENT—AUTHORITY**
OF AGENTS . I. L. R., 24 Mad., 130

—s. 238—

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OF PRINCIPAL . 6 C. W. N., 429

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See **HINDU LAW—JOINT FAMILY—**
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[6 C. W. N., 583]
I. L. R., 24 Mad., 85, 96

1. CO-SHARERS, LIABILITY OF.

1.—*Contract Act (IX of 1872), s. 69—Dispos-*
session by co-sharer.—Where a co-sharer is kept out

CONTRIBUTION, SUIT FOR—continued**1. CO-SHARERS, LIABILITY OF—concluded.**

of possession wrongfully by another co-sharer, a suit for contribution at the instance of the latter for rent paid by him during the period of dispossession does not lie against the former. *SWARNAMOYEE DEBI v. HARI DAS ROY* (1902) # C. W. N., 903

■ VOLUNTARY PAYMENT.

■—*Limitation Act (XV of 1857), Sch. II, Art. 132—Voluntary payment—Assessment—Payment by A of assessment due on B's land does not give A a charge on such land—Contribution—The plaintiff filed this suit in 1901 to recover Rs. 30, which he had paid for the defendants in respect of yearly assessments due upon their land since the year 1891. Their land formed part of a larger holding which stood in one name in the revenue records, and the assessment on which the plaintiff paid. He now sued the defendants for contribution in respect of the*

Act did not apply. The mere fact that the plaintiff was entitled to sue the assessment from the defendants

[I. L. R., 28 Bom., 437]

■ PAYMENT OF JOINT DEBT BY ONE DEBTOR

3.—Costs—Contribution—Suit against three defendants—Decree against all for payment of plaintiff's costs—Payment of entire costs by one

Upon a warrant of attachment being issued against A, he paid the whole amount due in respect of the

SYED ESHRANIM SAHIB (1902)

[I. L. R., 28 Mad., 373]

4.—Evidence—Contribution as between judgment-debtors—Decree against two defendants jointly—Satisfaction by one alone—Prima facie case made by production of judgment and certificate of satisfaction—Joint tort-feasors—Where the amount of a decree has been recovered from one of two judgment-debtors against whom it was jointly passed,

CONTRIBUTION, SUIT FOR—continued.**3. PAYMENT OF JOINT DEBT BY ONE DEBTOR—continued.**

and he sues the other judgment-debtor for contribution

But it will be open to the party from whom contri-

be entitled to contribution. Whether the principle laid down in *Merryweather v. Nixon*, 8 T. R., 186, should be followed in India—*Quere*. *SIVA PANDA v. JIJUSTI PANDA* (1901) I. L. R., 25 Mad., 589.

5.—Act I of 1872 (Indian Evidence Act), s. 92—Construction of document—Evidence of oral agreement not excluded.

which he had mortgage executed. His claim arising in the suit was merely a surety. *Held* that evidence was admissible to show that the plaintiff executed the mortgage-bond as a surety only. The plaintiff failed to prove that he was other than a principal, whereupon it was held that he was not entitled to recover anything from the defendants by way of contribution, the case upon

6.—Revenue sale—Hindu law—Payment, by one of several co-sharers owning estate subject to revenue, to sale sale—Charge on share of co-sharers—Contribution—Transfer of Property Act (IV of 1882), ss. 82, 100—Revenue Recovery Act (Mad. Act II of 1963), ss. 2, 32, 43—Civil Procedure Code (Act XIV of 1852), s. 601—Statutory application of general principle of equity to particular cases—Limitation Act (XV of 1857), Sch. II, Arts. 132,

CONTRIBUTION, SUIT FOR—*continued.*3. PAYMENT OF JOINT DEBT BY ONE DEBTOR—*continued.*

he is by operation of law entitled to a charge upon the share of each of his co-sharers for the realization of the latter's share of the revenue, as between the co-sharers *Seshagiri v. Pichu*, I. L. R., 11 Mad., 352, followed. *Achut Ramchandra Pai v. Hari Kamli*, I. L. R., 11 Bom., 318; *Kinn Ram Das v. Moraffer Hosain Shaha*, I. L. R., 13 Cal., 809, and *Seth Chitor Mal v. Shab Lal*, I. L. R., 13 All., 273, dissented from. *Per BHASHYAM ATTANAR, J.* (at the first hearing).—That the suit was governed by Art 132 of Sch. II to the Limitation Act, in as far as it related to the enforce-

generally arises in cases where the party seeking

from the income of the plaintiff's share after it had

the person bringing the suit is referred to as having "paid" the amount sought to be recovered. In such a case, it is but just that all should contribute in proportion towards a benefit claimed by all. It is immaterial whether the party seeking contribution made the payment voluntarily or involuntarily,

whom he seeks contribution have been benefited to that extent. *RAJAH OF VIZIANAGRAM v. SETRUCHERLA DOMASEKHARABAZ* (P.B. 1903)

[I. L. R., 28 Mad., 686]

7. — *Surety — Contract Act (IX of 1872), s. 145—Implied promise by principal debtor to indemnify surety — Joint decree against two judgment-debtors — Satisfaction by one of them by execution of promissory note—Suit by him for contribution—Maintainability—Sum paid under the guarantee—Two persons jointly executed a negotiable promissory note payable to S for Rs. 1,000, each receiving Rs. 500 out of the consideration. S subsequently sued them on the note, and obtained a decree against them jointly for Rs. 1,480, being the amount due under the note.*

showed that the last mentioned promissory note was accepted by S as payment of the amount due under the decree. This note had not, at the date of the suit, been paid. Plaintiff now sued the other joint maker

CONTRIBUTION, SUIT FOR—*concluded.*3. PAYMENT OF JOINT DEBT BY ONE DEBTOR—*concluded.*

of the original promissory note for contribution. *Held* that he had no cause of action at the date of suit. *PETTI NARAYANAMURTHI AYYAR v. MARI-MUTHU PILLAI* (1902). I. L. R., 26 Mad., 323

4 JOINT WRONG-DOERS.

8. — *Bona fide claim—Bona fide claim of right.*—When a joint decree was passed against several persons, no suit for contribution would lie as between them if they were wrong-doers in the sense that they knew or ought to have known that they were doing an illegal or wrongful act. But if they were not guilty of wrong in that sense, but acted under a bona fide claim of right, and had reason to suppose that they had a right to do what they did, then there is a right of contribution *inter se*. Some time in 1826, B, the common ancestor of the parties, dispossessed K of a share in a certain property; after an interval of 27 years and 6 months K brought a suit and proved his right and recovered possession; meanwhile, i.e., 5 years after the dispossession, K had died and had been succeeded by his sons. There was nothing to show that K, or, after him, his heirs, knew that they were doing a wrongful or unlawful act or that they did not act under cover of a bona fide claim of right. The circum-

referred to. *HARI SARAN MAITRA v. JOTINDRA MOHAN LARIM* (1900). 5 C. W. N., 393

8. — *Dispossession — Tort-feasor — Dispossession.*—Where the plaintiffs were in possession of land standing in the names of their father and deceased brother, part of which was sold by the deceased brother's widow to the defendants, who got a decree for possession against the plaintiffs, who kept the former out of possession: *Held* that plaintiffs' possession should not be considered as that of tort-feasors, and that they were therefore entitled to recover from the defendants, by way of contribution, the rent paid by the plaintiffs for the portion of the land purchased by the defendants. *MOHESH CHANDRA MUNDLE v. BOIDYA NATH VAITANDI* (1901). 6 C. W. N., 88

CONVERTS.

See HINDU LAW—ADOPTION—REQUISITES FOR ADOPTION AUTHORITY

[I. L. R., 25 Bom., 55]

CONVERTS—continued

—Hindus becoming Mahomedans—*Hindu law—Joint Hindu family—Effect of conversion of member of joint Hindu family to Mahomedanism—Regulation III of 1832, s. 9—Compromise—Title taken under compromise between persons having mutually exclusive claims—* In the year 1845 one Ratan Singh, who at that time formed with his son Daulat Singh a joint Hindu family, possessed as such of considerable property, both movable and immovable, became converted to Mahomedanism. In 1851 Ratan Singh died, his son Daulat Singh having predeceased him, and such portion of the property as was situate in British India was taken over by the Court of Wards, and held by them apparently on behalf of Raj Kunwar, the widow of Ratan Singh, and Sen Kunwar, the widow of Daulat Singh (these two ladies being at that time detained in Lucknow under the supervision of the officials of the King of Oudh), without any recognition of either widow having a title superior to that of the other. In 1857 Sen Kunwar executed a bond for a considerable sum of money, in favour of Jai Chand, the father-in-law of her daughter, Mewa Kunwar. Sen Kunwar died in 1857, and Raj Kunwar in 1858. After the death of these ladies, three claimants to the property appeared, namely, Chatar Kunwar and Mewa Kunwar, the

partition of the property in accordance with the terms of the compromise was completed. In 1866 Chatar Kunwar died, and upon her death Mewa Kunwar successfully asserted her right by survivorship to the 4½ annas which had been the share of her sister, and thus became possessed of the whole 8½ annas assigned by the compromise mentioned above to the daughters of Daulat Singh. Meanwhile, however, Jai Chand had brought a suit upon the bond given to him in 1857 by Sen Kunwar. Why this bond was originally executed did not appear, nor that there was evidence of any such legal necessity pressing upon Sen Kunwar as would have supported an incumbrance of more than her own life interest in the property. The final decree in this suit was obtained by Jai Chand in 1868, that is to say, after the surviving defendant, Mewa Kunwar, had been declared entitled to the entire 8½ annas share, and it was a decree based upon a confession of

CONVERTS—concluded.

Singh in 1845, the provisions of s. 9 of Regulation VII of 1832 embodying merely a rule of procedure and not a rule of substantive law, and no suit claiming the family property having been brought by Daulat Singh to which the rule of procedure therein laid down could be applied; that in any case the conversion of Ratan Singh worked a separation of the joint Hindu family, and one-half of the property became vested in Daulat Singh, though it might not have been actually partitioned; that the property so becoming vested in Daulat Singh would be held by him as a separated Hindu; that the property was held by the Court of Wards during the lives of Raj Kunwar and Sen Kunwar, not specifically for either of them, but for the benefit of the rightful owner, both ladies being incapable of managing their affairs; that, after the compromise arrived at between Chatar Kunwar and Mewa Kunwar on the one side and Khairati Lal on the other, the estate which Chatar Kunwar and Mewa Kunwar took was a Hindu daughter's estate merely, and not an absolute estate, and that, inasmuch as no legal necessity was shown for the making of Sen Kunwar's bond or for the relinquishment by Mewa Kunwar of the estate then that death her sons were entitled to recover possession.

could not be held to be *res judicata* in the present appeal, the judgment in that case could be used as evidence to the extent pointed out in the cases of *Ram Ranjan Chukerbatty v. Ram Narain Singh*

CONVEYANCE

See STAMP ACT (II of 1893)—

s. 24 AND SCH. I, ART. 27;

[I. L. R., 27 Bom., 150

SCH. I, ARTS. 55, 73 AND III (c)

[I. L. R., 24 All., 373

CONVICTION.

—legality of—

See APPEAL IN CRIMINAL CASE—PRACTICE AND PROCEDURE. I. L. R., 30 Cal., 288

—no bar to civil action—

See DAMAGES—SUITS FOR DAMAGES—TORT. 6 C. W. N., 915

CONVICTION—concluded.

—on wrong charge—

See ERROR . I. L. R., 29 Calc., 481

—previous—

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS.

[I. L. R., 28 Calc., 689]

See PREVIOUS CONVICTION

—setting aside, for error in law—

See JOINDER OF CHARGES.

[5 C. W. N., 866]

—setting aside, when accused does not appeal—

See REVISION—CRIMINAL CASES.

[5 C. W. N., 330]

—without framing charge—

See SESSIONS JUDGE, JURISDICTION OF.

[I. L. R., 28 Calc., 63]

—without jurisdiction—

See MAGISTRATE—RE-TRIAL OF CASES.

[I. L. R., 29 Calc., 412]

...that matter of account, but especially when all the
were found to
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5 C. W. N., 298

2.—Indian Penal Code (Act XLV of 1860), ss. 290, 447—Public nuisance—Criminal trespass—Conviction on a charge which the accused was not called upon to meet—When the accused was called upon to answer a charge under s. 447, Indian Penal Code, and was convicted under that section as also under s. 290, Indian Penal Code, and on appeal the Sessions Judge was of opinion that the conviction could not be maintained under s. 447, but that s.

conviction could not stand. IN THE MATTER OF CHINIBAS PAL (1901) . . . 5 C. W. N., 567

CO-PARCENERS.

See HINDU LAW—JOINT FAMILY.

COPIES OF DOCUMENTS.

See STAMP ACT (II of 1839), SCH. I,
ART. 24 . I. L. R., 26 Bom., 523

COPY OF DECREE.

See LIMITATION ACT, 1877, ss. 12 AND 5.
[7 C. W. N., 108]

CORONER.

—Coroner's Act (IV of 1871), ss. 24, 25, 26, 29
—Prisoners Act (III of 1900), ss. 2, 11—
Criminal Procedure Code (Act V of 1898), ss. 213,
214, 477, 479, 213, sub-s. (2)—Coroner's inquisition
—Commitment to High Court Sessions—Jurisdiction
of Presidency Magistrate to try or inquire
—Acquittal or discharge by Magistrate—Bail—
Jurisdiction of the High Court.—The Coroner has
power to commit to the High Court; but a commit-
ment by him does not oust the jurisdiction of the

Magistrate will be operative, subject to the discre-
tion of the High Court when subsequently consider-
ing the Coroner's inquisition. EMPEROR S. JOGESWAR
PARI (1903) . . . 7 C. W. N., 889

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—principal officer of—

See PLAINT—VERIFICATION AND SIGNA-
TURE . . . 5 C. W. N., 91

—suit by—

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CO-SHARERS

Col.

1 ENJOYMENT OF JOINT PROPERTY—
ERECTION OF BUILDINGS . . . 253

2. SUITS BY CO-SHARERS WITH RE-
SPECT TO THE JOINT PROPERTY—

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CO-SHARERS—concluded**2. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—concluded.****(b) KAPUTYATS—concluded.**

sharer landlord: *Held* that such a suit is maintainable, although plaintiffs' co-sharer is not made a party. *Also*, that a 188 of the Bengal Tenancy Act

of contract, does not refer to such a matter. *Haider Nath De Sarkar v. Jhin* (1897), 2 C. W. N., 44.

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See LAND REGISTRATION ACT (BEN. ACT VII of 1876), s. 82. 7 C. W. N., 568

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See DIVORCE ACT (IV of 1869), s. 7.

[I. L. R., 29 Calc., 619

1. APPEAL.

1.—*Second appeal—Discretion of Court to give costs—Principle*—A second appeal lies, as to costs, against an appellate decree. *Daulat Ram v. Durga Prasad* (1893), I. L. R., 15 All., 333, relied upon. A Court has full discretion as to costs; but that discretion must be exercised on general principles, and not arbitrarily. Case where it was held that the order of the first Court, ordering that plaintiff, who was the unsuccessful party, was not to pay any costs to defendant, was bad. *BUGGOSATI PAL v. MANOHAR ALI* (1903) 7 C. W. N., 647

2. SPECIAL CASES

3.—*Appeal—Privy Council—Appeal to Privy Council—Appeal dismissed for want of prosecution—Order made by the High Court that the appellant should pay the respondent's costs of application for leave to appeal*—Where an appeal to the Privy Council was dismissed for want of prosecution, the High Court ordered the appellant to pay the respondent's costs of the application for leave to appeal. *Milton v. Carter* (1893), Ap. Ca., 639, followed. SECRETARY OF STATE FOR INDIA v. JAWARDAN GANPATRAO (1902)

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3.—*Attorney and client—Practice—Attorney, change of—Employment of attorney by testator*

Shamrao Pandurang v. Trustees of Bhagandas (1869), 6 Bom. H. C., 163, distinguished. GIRINDRA COOMAR DUTT v. AMULYA CHAZAN GHOSH (1902)

[8 C. W. N., 308

4.—*Divorce—Suit for dissolution of marriage—Costs between party and party—Costs between attorney and client—Liability of co-respondent—Damages—Divorce Act (IV of 1869), s. 45—Civil Procedure Code (Act XIV of 1882), s. 220—Practice—Where a husband obtained an order for*

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[I. L. R., 28 Calc., 84.

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5 - Mortgage—Prior and subsequent mortgagees—Costs recoverable from puisne mortgagees—Act IV of 1882 (Transfer of Property Act), s. 90 A prior mortgagee in a suit upon his mortgage—

entitled to a decree under s. 90 of the Act against the puisne mortgagee for the amount of the costs
RAM LAL v. SUD CHAND (1901)

[I. L. R., 23 All., 439]

3. COSTS IN THE CAUSE**4. ORDER AS TO COSTS.**

7.—Appeal from order as to costs—Dismissal

—suit to plain—
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See BARRISTER.

See PRACTICE—CIVIL CASES—COUNSEL.

—exclusive right of audience—

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[I. L. R., 30 Calc., 886]

—non-appearance of—

See APPEAL—DEFAULT IN APPEARANCE.

[I. L. R., 20 Mad., 267]

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the case on behalf of the party: Held that, even if the person instructing has no authority to bind the

COUNSEL—concluded.

party, the compromise is binding on the latter if he ratifies the acts and the compromise *Per BANERJEE, J.*—The appointment of counsel or a vakil by a party to conduct a case does not necessarily authorise him to make a compromise—

enters into a compromise on behalf of his client, a presumption arises that he has done so with his client's assent. *BRUT NATH SIRCAR v. RAM LALL SIRCAR* (1900)

6 C. W. N., 82

COUNTERFEITING COIN.

—Act XLV of 1860 (Indian Penal Code), s. 232—Counterfeiting Queen's coin—Removing rings from coins used as ornaments, and restoring the same to circulation—It is not an offence under s. 232 of the Indian Penal Code to remove the ring from a coin which has been used to form part of a necklace or other ornament, and to work up the face of the coin—

COURT.

See FOREIGN COURT, JUDGMENT OF.

See MANAGEMENT OF ESTATE BY COURT

—meaning of "Court"—

See BOMBAY CITY IMPROVEMENT ACT.

[I. L. R., 27 Bom., 424]

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See JURY—WITHDRAWAL OF CASE FROM.
 [5 C. W. N., 411]

See SENIOR'S JUDGE.

COURT OF WARDS.

See GUARDIAN—DISQUALIFIED PROPRIETORS . . . I. L. R., 24 All., 136

See OUDH LAND-REVENUE ACT (XVII of 1876) . . . 5 C. W. N., 881

—petition to Collector against officer of—

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES.

[I. L. R., 30 Calc., 415]

—position of manager—

See PUBLIC SERVANT.

[I. L. R., 28 Calc., 344]

1.—Disqualified proprietor—Act XVII of 1876 (Oudh Land-revenue Act), Chap. VIII—Nature of disqualification imposed by proceedings taken under Chap. VIII—Domicile—Where a person, who had been made a "disqualified

COURT OF WARDS—concluded.

proprietor" in Oudh under the provisions of Chap. VIII of Act XVII of 1876, attempted to sell a small portion of his property situated in the North-Western Provinces, which property had not been entered in any list of the property of the disqualified proprietor taken under the management of the Court of Wards, and had apparently escaped the notice of the Court of Wards, it was held that the disqualification imposed as a consequence of proceedings legally taken under Chap. VIII of the Oudh Land-revenue Act, 1876, was a personal disqualification, and extended to all dealings of the disqualified proprietor with any property, wheresoever situate; nor was this disability affected by the fact that this particular property had not been specifically taken over as part of the disqualified proprietor's estate by the Court of Wards.

NARAIN C. PATIL BHADUR SINGH (1902)

[I. L. R., 25 All., 195]

2.—Servants of—Prosecution of servants of Court of Wards, by proprietor of estate, on assuming management.—The owner of an estate, on assuming management thereof, is competent to prosecute a servant of the Court of Wards for criminal breach of trust committed during the management of the estate by the Court. *TANAK NATH NUNDY v. GOBINKA CHANDRA MITRA* (1900). 5 C. W. N., 248

COURT OF WARDS ACT (BEN. ACT IX OF 1870).

—ss. 6, 7 and 10—*Court of Wards—Revenue*
—*Proprietor—Jurisdiction—Civil Court—Lunatic—Charges of the person and property of*

consists of land or an interest in land, is not dependent upon the nature of the property, and is not restricted to property paying Government revenue. It does not profess to define the term "disqualified proprietors." It defines the circumstances under which a certain class of persons, namely, the proprietors of land subject to Government revenue, shall be held to be disqualified from

COURT-FEES—concluded

See PRACTICE—CIVIL CASES—TEST CASE

[I. L. R., 29 Calc., 140]

See VALUATION OF SUIT

—payment of—

See PAUPER SUIT—SUITS

[I. L. R., 25 Mad., 733]

—*Fee payable on appeal under Indian Insolvent Debtors' Act (11 & 12 Vict., cap. 21).*—The Court-fee payable on an appeal preferred under s. 73 of the Indian Insolvent Debtors' Act is that which is provided for in Art. 18 of Schedule A to the table

COURT-FEES ACT (VII OF 1870).

See APPELLATE COURT—INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT.

[I. L. R., 30 Calc., 501, 518]

See VALUATION OF SUIT—SUITS.

[I. L. R., 25 Mad., 548]

—*Declaratory decree, suit for—Court-fees Act (VII of 1870), s. 7, cl. iv (c), and Art. 15 of Sch. II—Suit for declaratory decree and consequential relief—Suit for possession of wife—Appeal—Costs.*—S. 7, cl. iv (c), and not Art. 15 of Sch. II, of the Court-fees Act (VII of 1870) applies to a case in which the plaintiff seeks for a

the order for costs, when no matter of principle is involved. *AMIRUL HOSSAIN v. KHAIRUNNESSA* (1901)

[I. L. R., 28 Calc., 587]

—s. 7—

See PLAINT—REJECTION OF PLAINT.

[I. L. R., 23 All., 423]

—s. 7, cl. iv (c)—

See COURT-FEES ACT (VII OF 1870)

[I. L. R., 28 Calc., 587]

See DECLARATORY DECREE, SUIT FOR—
MISCELLANEOUS SUITS

[I. L. R., 30 Calc., 788]

—s. 7, cl. iv (d) — *Valuation by plaintiff of relief sought—Increase of valuation by Court, and return of plaintiff for want of jurisdiction—Invalidity of order*—A plaint was filed in a certain Court, praying for an injunction, the relief sought being valued at Rs. 1, on the basis of which valuation the Court had jurisdiction to try the suit. On objection being taken by the defendant that the plaintiff's valuation was incorrect, and that the proper valuation of the suit exceeded the pecuniary limits of the Court's jurisdiction, an issue was framed and the question was tried whether the suit was in fact

COURT-FEES.

See COURT-FEES ACT.

COURT-FEES ACT (VII OF 1870)— continued.

—s. 7, cl. iv (d)—concluded.
within the pecuniary jurisdiction of the Court, with the result that the Judge held the proper valuation of the relief sought to be Rs. 2,700, which exceeded the pecuniary jurisdiction of the Court. He accordingly returned the plaint for presentation to the proper Court. *Held* that the Court had no power to increase the value of the suit. S. 7, cl. iv (d),

had jurisdiction **GURUJANMA v. VENKATA-KRISHNAMA CHETTI** (1900) I. L. R., 24 Mad., 34

—s. 7, cl. v (b)—

See VALUATION OF SUIT—SUITS
[I. L. R., 24 All., 318]

—ss. 8, 11—

See APPELLATE COURT—INTERFERENCE
WITH, AND POWER TO VARY, ORDER OF
LOWER COURT.
[I. L. R., 80 Cal., 501]

—s. 12—

See APPEAL—ACTS—COURT-FEES ACT.
[I. L. R., 28 Cal., 334]

—s. 16—

—Court-fees Act (VII of 1870), ss. 4, 16—
Stamp duty on memorandum of objections—When

hearing. REFERENCE UNDER COURT-FEES ACT,
1870, s. 5 (1901) I. L. R., 25 Mad., 24

—s. 17—

See PRACTICE—CIVIL CASES—TEST
CASE I. L. R., 29 Cal., 140

—s. 19D and Sch. I, Art. 11—

L.—Probate duty—Letters of administration,
duty on—Letters of administration granted in
respect of property passing by survivorship—
Application for refund of duty—A Hindu died
intestate, leaving two sons who were joint with
him. Part of the deceased's estate consisted of two

COURT-FEES ACT (VII OF 1870)— continued.

—s. 19D and Sch. I, Art. 11—concluded
chargeable. *Held* that the refund could not be

held by the deceased as trustee. But where no duty

administration to exemption. **COLLECTOR OF AH-
MEDABAD v. SAYCHAND LADKACHAND** (1902)
[I. L. R., 27 Bom., 140]

—s. 19H—

—Valuation of assets by attorney-administrator
—Application for inquiry under s. 19H, Court-
fees Act—Materials necessary—Costs not pro-
vided in the Act—Assurance of the administrator
to pay fee on the excess. In moving the Court
for an inquiry into the true value of the assets of a
deceased person under s. 19H, Court fees Act, it is
not enough for the Collector simply to make an

—s. 28—

See PLAINT—REJECTION OF PLAINT.
[I. L. R., 23 All., 423]

L.—Plaint insufficiently stamped—Dismissal of
suit—Appeal by plaintiff in District Court—
Stamp on memorandum of appeal also insufficient
—Second appeal by plaintiff properly stamped—
Maintainability of second appeal—Order by High
Court for payment of proper duty on plaint and on

of the Court-fees Act. An order was accordingly
made by the High Court for a Court-fee of Rs. 150 to
be paid on the plaint and on the memorandum of

COURT-FEES ACT (VII OF 1870)— continued.

—s. 28—concluded.

first appeal, within a specified time. VALAMBAL AMMAL v. VITHILINGA MUDALIAR (1900)

[I. L. R., 24 Mad., 321]

2.—Insufficient duty on plaint and on memorandum of appeal—Order by High Court on second appeal for payment of the duty properly payable—Civil Procedure Code (Act XIV of 1892), s. 592A—Retrospective validation of defective memorandum of appeal—Effect of this section on defective plaint.—In a suit for the cancellation of a sale-deed executed by plaintiff to defendant for

COURT-FEES ACT (VII OF 1870)— continued.

—s. 34—

1.—Court-fees Act (VII of 1870), as amended by Act XII of 1891, s. 34—Stamp Act (II of 1899), s. 69—Sale by thief of stolen stamps—Offence.—A person who had been convicted

EMPRESS v. VIRASAMI (1900)

[I. L. R., 24 Mad., 319]

2.—Court-fees stamp, sale of—"Sale"—Exchange—Transfer of stamp on promise that one of equal value would be returned.—Where a mukhtear, who had purchased a court-fee stamp for a client, transferred it to another client, the latter having agreed to return to the mukhtear another court-fee stamp of the same value, and was convicted of an offence under s. 34 of the Court-fees Act: Held that there had been no 'sale' of the stamp within the meaning of s. 34 of the Court-fees Act (VII of 1870), and that the conviction should be set aside. KSDAR NATH SHANA v. EMPRESS (1903)

[I. L. R., 30 Calc., 821: s.c., 7 C. W. N., 704]

—Sch. I, Art. 1, proviso—

See PRACTICE—CIVIL CASES—TEST, CASE, I. L. R., 29 Calc., 140

—Sch. I, Art. 11—

See ante, s. 19D AND SCH. I, Art. 11.

1.—Assessment of value of estate principally

—ss 25 and 30—

—Further rules of 1893—Rules 7 and 5—attorneys and
... of same—
the value of
stamp of Rs 16

and an adhesive stamp of Rs 2. The impressed stamp bore the name of the attorney for the plaintiff, and the adhesive stamp that of another, and it further appeared that the stamps had been purchased on

rules, and that the solicitor should have placed the circumstances on paper, to entitle him to the same. GERSON v. RADHA KISSEN (1902) 6 C. W. N., 785

—s. 31—

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE

[I. L. R., 26 Mad., 421]

See COMPENSATION—CRIMINAL CASES—FOR LOSS OR INJURY CAUSED BY OFFENCE. I. L. R., 24 Mad., 305

2.—Will by husband conferring general power

COURT-FEES ACT (VII OF 1870)—
concluded—Sch. I, Art. 11—*concluded*

ment, and also died. Her executor now applied for probate of her will, and the question was raised whether he was liable to pay probate duty on the fund or any part thereof. *Held* that the power of

[I. L. R., 25 Mad., 515]

—Sch. II, Art. 15—

See COURT-FEES ACT (VII OF 1870)

[I. L. R., 28 Cal., 567]

—Sch. II, Art. 17, cl. iii—

See DECLARATORY DECREE, SUIT FOR—
MISCELLANEOUS SUITS

[I. L. R., 30 Cal., 788]

—*Suit to set aside sale under the Revenue Sale Law (Act XI of 1859)—Court-fee payable on the plaint—Declaratory suit—Right to possession and to set aside sale—Consequential relief—A suit to set aside an alleged illegal sale held for arrears of revenue, and a declaration of right and possession in respect of the property in dispute, falls within Art. 17, cl. iii, as a suit to obtain a declaratory order where consequential relief is prayed for, and the plaint should be stamped as such.* MAHOMED TAKIBUDDIN BUDDI v. COLLECTOR OF THE 24-PARGANAS (1901). 5 C. W. N., 157

COVENANT.

—breach of—

See VENDOR AND PURCHASER—BREACH OF COVENANT.

COWRIE.

See GAMBLING. 5 C. W. N., 503

CREDITOR.

See DEBTOR AND CREDITOR.

—suit by—

See RECEIVER. I. L. R., 30 Cal., 937

CRIMINAL BREACH OF CONTRACT.

See ACT—1859—XIII.

CRIMINAL BREACH OF TRUST.

See COURT OF WARDS. 5 C. W. N., 348

See JOINDER OF CHARGES

[I. L. R., 24 All., 254]

CRIMINAL BREACH OF TRUST—
concluded.

1.—*Claim for money—Refusal to pay to a person money claimed by another—False claim—Suit brought by person claiming—Penal Code (Act XLV of 1860), s. 406.*—An accused person should not be convicted of criminal breach of trust on refusing to give to the complainant money, which is claimed by another person as well as by the complainant, and which the accused denies is due to the complainant. The fact that that other person has brought a suit to recover the amount claimed by him against the accused is a complete answer to the charge of criminal breach of trust against the

2.—*Servant—Penal Code (Act XLV of 1860), ss. 405, 408, 109, 23, 24—Criminal breach of trust by a servant—Dishonest user of property—Deterioration in value, appreciable and substantial—Willful and wantonly negligent—Dishonest*

property comes within the definition of the offence when such user causes substantial or appreciable loss to the owner of the property or gain to the accused.

1886, 3

KESHAU C.

(1901).

3.—*Criminal breach of trust by servant—Papers ordered to be destroyed—Property—Appropriation of papers by servant—Penal Code (Act XLV of 1860), ss. 95 and 408—Criminal Procedure Code (Act V of 1898), s. 432.*—The accused, a servant, was ordered by his employers in Calcutta to take certain bags of papers and forms belonging to them to their yard in Garden Reach and there to burn and destroy them. Instead of doing this, the accused brought some of them to Bow Bazar in Calcutta. *Held* that the act of the accused did not amount to criminal breach

an offence under the Code but for the operation of that section. EMPEROR v. PRASAD CHOWDHRY (1902). I. L. R., 29 Cal., 489

CRIMINAL COURT.

—disposal of property by—

See CRIMINAL PROCEDURE CODE, s. 123.

CRIMINAL COURT—concluded.

—disposal of property by—concluded

See **STOLEN PROPERTY—DISPOSAL OF, BY THE COURT.**

—powers of—

See **PROTECTION OF PROPERTY.**
[7 C. W. N., 522]**CRIMINAL FORCE.**

—dispossession by—

See **CRIMINAL PROCEDURE CODE, s. 522.**
[5 C. W. N., 250]See **POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPOSSESSION BY CRIMINAL FORCE****CRIMINAL INTIMIDATION.**—Threat to ruin another by cases—“Injury” —
Penal Code (Act XLV of 1860), ss 41, 603 and
506.—In order to convict a person of criminal in-

that person is interested. Where the petitioner, who threatened to ruin the complainant by cases, was convicted of criminal intimidation under s. 506 of the Penal Code: Held that the conviction could not stand. Had the threat been to ruin the complainant by false cases, the offence of criminal intimidation would have been committed; but as the threat was

“injury.” **JOWAHAR PATTAK v PARBHOO AHIR**
(1902)
[I. L. R., 30 Calc., 418; s.c., 7 C. W. N., 116]

CRIMINAL MISAPPROPRIATION.

—Indian Penal Code, ss 403, 426—Criminal misappropriation of property—Mischief—Dishonest intention Deterioration of the value of mortgaged property.—When the reversioner of a mortgagor sold some of the bricks of the mortgaged house which had tumbled down, and appropriated the amount, and the magistrate convicted him of mischief: no sub-
erty was
MORAN
[10 C. W. N., 34]

CRIMINAL PROCEDURE CODE.

—application of—

See **JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION—OFFENCE COMMITTED OF THE HIGH SEAS.**
[I. L. R., 25 Bom., 636]**CRIMINAL PROCEDURE CODE—continued.**

—Application of, to Police in Calcutta.—The Criminal Procedure Code does not apply to the Police in Calcutta unless expressly made applicable to them [s. 1, sub-s (2)]. Cls (p) and (q) of s. 4, Code of Criminal Procedure, do not apply to the Police in Calcutta. **SOLICITOR TO THE GOVERNMENT OF INDIA v. MADHO DHORI** (1903) 7 C. W. N., 681

—s. 4 (A)—“complaint”—

See post, s. 437 . . . 6 C. W. N., 437

See **ADULTERY . I. L. R., 30 Calc., 810**See **COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT** . . . 5 C. W. N., 370See **COMPLAINT—INSTITUTION OF COM-**See **FALSE CHARGE** . 5 C. W. N., 108

—s. 4, cl. (c)—“offence”—

See **ACT—1859—XIII, ss 1, 2**
[I. L. R., 34 Mad., 680]

—s. 4, cls. (p), (q) do not apply to police in Calcutta—

See **CRIMINAL PROCEDURE CODE.**
[7 C. W. N., 681]

—s. 12—

See **MAGISTRATE—POWERS OF MAGISTRATES** . I. L. R., 29 Calc., 389

—s. 31—

See **DISCHARGE OF ACCUSED.**
[7 C. W. N., 527]

—s. 30—

See **DEPUTY COMMISSIONER.**
[7 C. W. N., 457]

—s. 42, cl. (a)—

See **ESCAPE FROM CUSTODY.**
[7 C. W. N., 337]

—s. 47—

See **EASEMENT . I. L. R., 30 Calc., 818**

—s. 54—

See **ESCAPE FROM CUSTODY.**
[I. L. R., 28 Calc., 253]

—s. 55—

See **SECURITY FOR GOOD BEHAVIOUR.**
[7 C. W. N., 681]

CRIMINAL PROCEDURE CODE—*continued*

—s. 79—

See WARRANT OF ARREST—CRIMINAL
CASES . . . 5 C. W. N., 447

—ss. 87, 88—

See ABSCONDING OFFENDER

—s. 88—

See MESNE PROFITS—ASSESSMENT IN
EXECUTION, AND SUITS FOR MESNE
PROFITS . . . I. L. R., 28 Calc., 540

—ss. 94, 96—

See PRODUCTION OF PROPERTY
[7 C. W. N., 522]

—s. 103—

—Penal Code (Act XLV of 1860), s. 157—
Rendering assistance to a public servant—Re-
fusal to sign search list by person who attended
search under Abkari law—Liability—Party called

1903) . . . I. L. R., 28 Mad., 419

—s. 108—

See RECOGNIZANCE TO KEEP PEACE.

—s. 107—

See MAGISTRATE—POWERS OF MAGIS-
TRATES . . . I. L. R., 29 Calc., 389

See NUISANCE—UNDER CRIMINAL PROCE-
DURE CODE . . . 7 C. W. N., 142

See POSSESSION, ORDER OF CRIMINAL
COURT AS TO—LIKELIHOOD OF
BREACH OF THE PEACE

[8 C. W. N., 683
7 C. W. N., 29]

CRIMINAL PROCEDURE CODE—*continued.*—s. 107—*concluded.*

See RECOGNIZANCE TO KEEP PEACE—

WHEN RECOGNIZANCE MAY BE
TAKEN; . . . 7 C. W. N., 32

LIKELIHOOD OF BREACH OF PEACE.
[7 C. W. N., 746]

See SECURITY FOR GOOD BEHAVIOUR
[I. L. R., 26 Mad., 471]

See TRANSFER OF CRIMINAL CASE—GENE-
RAL CASES . . . I. L. R., 24 All., 151

—s. 109—

See SECURITY FOR GOOD BEHAVIOUR.
[5 C. W. N., 28
7 C. W. N., 661]

—s. 110—

See SENTENCE—IMPRISONMENT—IMPRIS-
ONMENT GENERALLY.
[I. L. R., 23 All., 422]

—s. 112—

See SECURITY FOR GOOD BEHAVIOUR
[I. L. R., 26 Mad., 471]

—s. 117—

See EVIDENCE—CRIMINAL CASES—
CHARACTER . . . I. L. R., 25 All., 273

See SECURITY FOR GOOD BEHAVIOUR
[5 C. W. N., 219
I. L. R., 29 Calc., 392, 779]

—s. 116—

See RECOGNIZANCE TO KEEP PEACE—WHEN
RECOGNIZANCE MAY BE TAKEN.
[7 C. W. N., 32]

See REFERENCE TO HIGH COURT—CRIM-
INAL CASES—SECURITY FOR GOOD
BEHAVIOUR . . . I. L. R., 23 All., 80

See SECURITY FOR GOOD BEHAVIOUR.
[I. L. R., 25 All., 273
" 26 Mad., 471]

—s. 118—

See SECURITY FOR GOOD BEHAVIOUR.
[I. L. R., 24 All., 148]

—s. 123—

See SECURITY FOR GOOD BEHAVIOUR.
[6 C. W. N., 593
I. L. R., 25 All., 131]

—s. 123—

See SECURITY FOR GOOD BEHAVIOUR.
[I. L. R., 25 All., 375]

CRIMINAL PROCEDURE CODE—*continued.*—s. 123—*concluded.*

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY.

[I. L. R., 23 All., 422]

—s. 125—

See SECURITY FOR GOOD BEHAVIOUR

[I. L. R., 28 Calc., 455]

—s. 133—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

[5 C. W. N., 173, 586]

7 C. W. N., 117

I. L. R., 23 All., 159]

—ss. 133, 137—

See WITNESS—CRIMINAL CASES—SUMMONING WITNESS.

[6 C. W. N., 548]

—s. 138—

See VERDICT OF JURY.

[6 C. W. N., 886]

—s. 139—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE

[5 C. W. N., 586]

6 C. W. N., 886]

—s. 144—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

See SECURITY FOR GOOD BEHAVIOUR.

[I. L. R., 26 Mad., 471]

—Ch. XII (ss. 145 to 148)—

See POSSESSION—ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE.

[I. L. R., 28 Calc., 416]

See REVISION, CRIMINAL CASES—GENERAL RULES FOR EXERCISE OF POWER

[I. L. R., 24 All., 315]

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

[I. L. R., 30 Calc., 508]

—s. 145 (1882, s. 145; 1872, s. 530; 1861, s. 318)—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—CRIMINAL COURT, PROCEEDINGS IN.

[I. L. R., 29 Calc., 187]

See MAGISTRATE—POWERS OF MAGISTRATE.

[I. L. R., 29 Calc., 242, 285]

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE

[7 C. W. N., 142]

See POSSESSION—NATURE OF POSSESSION.

[I. L. R., 29 Calc., 206]

CRIMINAL PROCEDURE CODE—*continued.*—s. 145 (1882, s. 145; 1872, s. 530; 1861, s. 318)—*concluded.*

See POSSESSION, ORDER OF CRIMINAL COURT AS TO

See RECEIVER. I. L. R., 30 Calc., 593

See REVISION—CRIMINAL CASES—

GENERAL RULES FOR EXERCISE OF POWER;

[I. L. R., 24 All., 443]

MISCELLANEOUS CASES.

[I. L. R., 25 All., 587]

See SECURITY FOR GOOD BEHAVIOUR.

[I. L. R., 28 Mad., 471]

See TRANSFER OF CRIMINAL CASE—

GROUND FOR TRANSFER;

[I. L. R., 28 Calc., 709]

LETTERS PATENT, HIGH COURTS, 1865, CL. 29

[I. L. R., 26 Mad., 188]

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

[I. L. R., 30 Calc., 508 n]

—s. 146—

See UENOA TENANCY ACT, s. 184 AND SCH. III. I. L. R., 29 Calc., 86

See LIMITATION ACT, 1877, ss. 23 AND 28, AND SCH. II, ARTS. 120, 142 AND 144.

[I. L. R., 26 Mad., 410]

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—

CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION;

[5 C. W. N., 105]

6 C. W. N., 710]

LIKELIHOOD OF BREACH OF THE PEACE;

7 C. W. N., 29]

DECISION OF MAGISTRATE AS TO POSSESSION;

7 C. W. N., 118]

ATTACHMENT OF PROPERTY.

[I. L. R., 30 Calc., 110]

—Attachment of property by Magistrate under s. 146 of the Criminal Procedure Code—Order relating to the management of such property—Interference by High Court—Jurisdiction—Criminal Procedure Code (Act V of 1893), ss. 145, 146 and 438—Charter Act (24 & 25 Vic. c. 104), cl. 15.—When attachingce
ings under

of this property granted a lease for a term of years at a certain annual rent, and subsequently, on the application of the lessee, the District Magistrate cancelled that lease and granted a fresh lease at a much lower rent: Held that no question of jurisdiction arose in the matter The High Court, in the exercise of its criminal jurisdiction, will no

CRIMINAL PROCEDURE CODE— continued

—s. 146—concluded

interfere with an order relating to the management of property under attachment by reason of an order under s. 146 of the Code. A remedy can easily be obtained from a Civil Court. **LOKESH SHAN CHOWDHURY v. NEDU BISWAS** (1902)
[I. L. R., 29 Calc., 382; s.c., 6 C. W. N., 489]

—s. 147 (1882, s. 147)—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, ETC
[5 C. W. N., 67, 335]

—s. 148—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—
TRANSFER OR WITHDRAWAL OF PROCEEDINGS;
[5 C. W. N., 686]
COSTS
[I. L. R., 28 Calc., 302]

—s. 154—

See INFORMATION OF COMMISSION OF OFFENCE
[6 C. W. N., 921
7 C. W. N., 345]

—ss. 156, 159—

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF, AND PRELIMINARIES TO, DISMISSAL
[I. L. R., 30 Calc., 923]

—s. 162—

See EVIDENCE—CRIMINAL CASES—POLICE EVIDENCE, ETC
[I. L. R., 28 Calc., 348]
See WITNESS—CRIMINAL CASES—STATEMENTS OF WITNESSES
[I. L. R., 29 Calc., 483]

—s. 164—

See CONFESSION—CONFESSIONS TO MAGISTRATE.
See TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER
[5 C. W. N., 864]
See WITNESS—CRIMINAL CASES—STATEMENTS OF WITNESSES
[I. L. R., 29 Calc., 483]

—s. 167—

See DETENTION OF ACCUSED BY POLICE
[7 C. W. N., 457]

—s. 173—

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES
[I. L. R., 29 Calc., 410]

CRIMINAL PROCEDURE CODE— continued

—s. 188—

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.
[I. L. R., 24 All., 256]

—s. 190—

See ABSCONDING OFFENDER
[I. L. R., 29 Calc., 417]
See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES
[5 C. W. N., 488
6 C. W. N., 202, 929]
See MAGISTRATE
[I. L. R., 30 Calc., 449]

—s. 191—

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES
[6 C. W. N., 202]
See DEFAMATION—IMPUTATION ON A WIFE
[I. L. R., 25 Bom., 151]
See SECURITY FOR GOOD BEHAVIOUR.
[I. L. R., 29 Calc., 392]

—s. 192—

See MAGISTRATE—GENERAL JURISDICTION.
[I. L. R., 30 Calc., 449]
See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS
[5 C. W. N., 686]
See TRANSFER OF CRIMINAL CASE—GENERAL CASES
[I. L. R., 24 All., 151]

—s. 193—

See FALSE EVIDENCE—GENERAL CASES.
[5 C. W. N., 630]

—s. 195—

See post, s. 476
[7 C. W. N., 423]
See APPEAL IN CRIMINAL CASE—CRIMINAL PROCEDURE CODE
[I. L. R., 25 All., 534]
See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES
[I. L. R., 30 Calc., 415]
See DEFAMATION—IMPUTATION ON A WIFE
[I. L. R., 25 Bom., 151]
See FALSE EVIDENCE—GENERAL CASES.
[6 C. W. N., 615, 830]
See FALSE CHARGE
[5 C. W. N., 108]
See PENAL CODE, s. 206.
[I. L. R., 29 Calc., 217]
See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES
[I. L. R., 23 All., 348
" 25 All., 129
" 28 Bom., 785
" 28 Mad., 139]
See SANCTION FOR PROSECUTION.

CRIMINAL PROCEDURE CODE—*continued.***—s. 196—**

See DEFAMATION—IMPUTATION ON A WIFE . . . I. L. R., 25 Bom., 151

See JOINDER OF CHARGES.

[I. L. R., 25 Bom., 90

—s. 197—

See ADMINISTRATOR GENERAL.

[I. L. R., 30 Calc., 927

See SANCTION FOR PROSECUTION.

—s. 198—

See APPEAL IN CRIMINAL CASE—CRIMINAL PROCEDURE CODE

[I. L. R., 25 All., 534

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES . . . I. L. R., 25 All., 132, 209

" 26 Mad., 43

See DEFAMATION—IMPUTATION ON A WIFE . . . I. L. R., 25 Bom., 151

—s. 199—

See ADULTERY.

[I. L. R., 29 Calc., 415

" 30 Calc., 910

See DEFAMATION—IMPUTATION ON A WIFE . . . I. L. R., 25 Bom., 151

—s. 200—

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES

[I. L. R., 29 Calc., 410

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS . . . 6 C. W. N., 840

—s. 202—

See COMPLAINT—

INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES;

[I. L. R., 29 Calc., 410

DISMISSAL OF COMPLAINT—POWER OF, AND PRELIMINARIES TO, DISMISSAL . . . 6 C. W. N., 295

See CRIMINAL PROCEEDINGS—IRREGULARITY . . . I. L. R., 25 Mad., 546

—s. 203—

See COMPLAINT—

INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES.

[6 C. W. N., 843

DISMISSAL OF COMPLAINT.

CRIMINAL PROCEDURE CODE—*continued.***—s. 205—**

See CONTEMPT OF COURT—PENAL CODE, s 174 . . . 5 C. W. N., 131

—s. 208—

See ACCUSED PERSON . . . 5 C. W. N., 110

—s. 209—

See DISCHARGE OF ACCUSED.

[I. L. R., 27 Bom., 84

" 24 Mad., 136

See MALICIOUS PROSECUTION.

[I. L. R., 24 Mad., 59

—ss. 209, 210—

See REVISION, CRIMINAL CASES—DISCHARGE OF ACCUSED.

[7 C. W. N., 77

—s. 213—

See ACCUSED PERSON . . . 5 C. W. N., 110

—ss. 213, 214—

See CORONER . . . 7 C. W. N., 889

—s. 215—

See ACCUSED PERSON . . . 5 C. W. N., 110

See COMMITMENT

—s. 222—

See DEFAMATION.

[I. L. R., 30 Calc., 402

—s. 227—

See ADULTERY.

[I. L. R., 29 Calc., 415

—ss. 227, 228, 229—

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE . . . 6 C. W. N., 72

—s. 230—

See SANCTION FOR PROSECUTION—NATURE, FORM AND SUFFICIENCY OF SANCTION.

[I. L. R., 30 Calc., 905

—s. 232—

See ERROR . . . I. L. R., 29 Calc., 481

See SESSIONS JUDGE, JURISDICTION OF

[7 C. W. N., 301

I. L. R., 28 Calc., 63

—s. 233—

See CRIMINAL PROCEEDINGS.

[I. L. R., 28 Calc., 104

—ss. 233 to 239—

See JOINDER OF CHARGES

—s. 236—

See ADULTERY . . . I. L. R., 29 Calc., 415

CRIMINAL PROCEDURE CODE—

continued.

—S. 326—

See JURY—JURY IN SESSIONS CASES—
CHOOSING JURY . 7 C. W. N., 188

—S. 332—

See JURY—JURY IN SESSIONS CASES.
[6 C. W. N., 887

—S. 337—

See CHARGE TO JURY—MISDIRECTION.
[I. L. R., 29 Calc., 782

See PARDON . I. L. R., 25 Bom., 675
[I. L. R., 24 Mad., 321

See WITNESS—CRIMINAL CASES—PERSONS
COMPETENT OR NOT TO BE WITNESSES
[I. L. R., 25 Bom., 423

—S. 339—

See PARDON . I. L. R., 25 Bom., 675
[I. L. R., 24 Mad., 321

—S. 340—

See SECURITY FOR GOOD BEHAVIOUR.
[I. L. R., 25 All., 375

—S. 342—

See EVIDENCE—CRIMINAL CASES—PRE-
VIOUS CONVICTIONS
[I. L. R., 28 Calc., 689

See EXAMINATION OF ACCUSED PERSON.
[7 C. W. N., 345

See TRANSFER OF CRIMINAL CASE—
GROUND FOR TRANSFER
[5 C. W. N., 864

—S. 345—

See DEFAMATION—IMPUTATION ON A
WIFE . I. L. R., 25 Bom., 151

—S. 350—

See SESSIONS JUDGE, JURISDICTION OF.
[I. L. R., 26 Bom., 50

—S. 367—

See DISCHARGE OF ACCUSED—EFFECT OF
DISCHARGE . I. L. R., 29 Calc., 726

See JUDGMENT—CRIMINAL CASES
[7 C. W. N., 30
I. L. R., 25 Mad., 534

—S. 369—

See COMPLAINT—DISMISSAL OF COMPLAINT
—EFFECT OF DISMISSAL.
[I. L. R., 28 Calc., 102

See DISCHARGE OF ACCUSED—EFFECT OF
DISCHARGE . I. L. R., 29 Calc., 726

—Ss. 386 to 389—

See COMPENSATION—CRIMINAL CASES—
FOR LOSS OR INJURY CAUSED BY OFFENCE.
[I. L. R., 28 Calc., 164

CRIMINAL PROCEDURE CODE—

continued.

—S. 388—

See COMPENSATION—CRIMINAL CASES—TO
ACCUSED, ON DISMISSAL OF COMPLAINT
[I. L. R., 26 Mad., 127

—S. 391—

See WHIPPING . I. L. R., 26 Mad., 465

—S. 403—

See COMPLAINT—DISMISSAL OF COM-
PLAINT—EFFECT OF DISMISSAL.
[I. L. R., 28 Calc., 211

See DISCHARGE OF ACCUSED—EFFECT OF
DISCHARGE . I. L. R., 29 Calc., 726

See MAGISTRATE—RE-TRIAL OF CASES
[I. L. R., 29 Calc., 412

1.—S. 403 (1) and *Espin.* and s. 215—*Went of*

[8 C. W. N., 640

2.—S. 403 (4)—*Precious acquittal—Acquittal*
by assessors on charge of abetment of dacoity with
murder—Subsequent conviction by jury of receiving
stolen property—Court competent to try the

persons were
with assess-
with murder,
sixth, with

abetting them. The abettor was acquitted. He was, however, subsequently charged before the Sessions Judge, sitting with a jury, with receiving stolen property knowing that it had been obtained by dacoity, under s. 412 of the Indian Penal Code. The jury returned a verdict of guilty, and the accused was convicted and sentenced. The facts on which the accused was convicted of receiving stolen property were the same as those upon which he had been acquitted of abetment of dacoity with murder, the dacoity by which the stolen property was alleged to have been received being the same as that which had formed the subject of the previous charge. On its being contended that the Court had power to try the accused a second time under sub-s (4) of s. 403 of the Criminal Procedure Code, inasmuch as a charge of receiving stolen property was

that the conviction was bad. KING-EMPEROR v
KRISHNA AYTHA (1901) . I. L. R., 24 Mad., 641 .

CRIMINAL PROCEDURE CODE— continued.

—s. 407—

See APPEAL IN CRIMINAL CASES—CRIMINAL
PROCEDURE CODE.

[I. L. R., 28 Mad., 465]

See SANCTION FOR PROSECUTION—REVO-
CATION OF SANCTION.

[I. L. R., 30 Calc., 394]

—s. 418—

See CHARGE TO JURY—MISDIRECTION.

[I. L. R., 27 Bom., 626]

See VERDICT OF JURY—POWER TO INTER-
FERE WITH VERDICTS

[I. L. R., 28 Mad., 243]

—s. 421—

See APPEAL IN CRIMINAL CASES—PRACTICE
AND PROCEDURE . 5 C. W. N., 332

See JUDGMENT—CRIMINAL CASES

[I. L. R., 25 Mad., 534]

—s. 422—

See PRACTICE—CRIMINAL CASES—RULE TO
SHOW CAUSE . 7 C. W. N., 80

—s. 423—

See APPEAL IN CRIMINAL CASES—

ACQUITTALS, APPEALS FROM;

[I. L. R., 26 Mad., 1, 478]

CRIMINAL PROCEDURE CODE.

[I. L. R., 25 All., 534]

" 23 All., 487

" 26 Mad., 421

" 29 Calc., 724

5 C. W. N., 432

See CHARGE—FORM OF CHARGE—SPECIAL
CASES—FORGERY

[I. L. R., 30 Calc., 822]

See CHARGE TO JURY—MISDIRECTION

[I. L. R., 27 Bom., 626]

See CRIMINAL PROCEEDINGS

[I. L. R., 28 Calc., 104]

See FIRST OFFENDERS

[I. L. R., 24 All., 306]

See MAGISTRATE—RE-TRIAL OF CASES

[I. L. R., 29 Calc., 412]

See RECOGNIZANCE TO KEEP PEACE—

MAGISTRATE WITH POWERS OF
APPELLATE COURT;

[I. L. R., 29 Calc., 383]

CANCELLING ORDER

[I. L. R., 30 Calc., 101]

See REVISION—CRIMINAL CASES—DIS-
CHARGE OF ACCUSED

[I. L. R., 27 Bom., 84]

See SESSIONS JUDGE, JURISDICTION OF

[7 C. W. N., 301]

I. L. R., 28 Calc., 83

CRIMINAL PROCEDURE CODE— continued

—s. 429—

See REVISION—CRIMINAL CASES—DIS-
CHARGE OF ACCUSED

[I. L. R., 27 Bom., 84]

—s. 435—

See DISCHARGE OF ACCUSED

[I. L. R., 28 Mad., 477]

See MAGISTRATE—GENERAL JURISDICTION.

[I. L. R., 30 Calc., 449]

See POSSESSION, ORDER OF CRIMINAL
COURT AS TO—LIKELIHOOD OF BREACH
OF THE PEACE.

[I. L. R., 28 Calc., 416]

See REFERENCE TO HIGH COURT—
CRIMINAL CASES

[I. L. R., 24 All., 346]

See REVISION, CRIMINAL CASES—

GENERAL RULES FOR EXERCISE OF
POWER; I. L. R., 24 All., 315

MISCELLANEOUS CASES

[I. L. R., 28 Mad., 41, 139]

I. L. R., 25 All., 537

—s. 436—

See DISCHARGE OF ACCUSED

[I. L. R., 24 Mad., 136]

See REVISION—CRIMINAL CASES—

COMMITMENTS; 7 C. W. N., 327

DISCHARGE OF ACCUSED

[7 C. W. N., 77]

—Criminal Procedure Code (Act V of 1898),
ss 209, 436, 632—Discharge of accused of an offence
triable exclusively by Court of Session—Murder—
Commitment made by District Magistrate—"Order
him to be committed for trial," meaning of—
Magistrate, competency of, to himself commit—
Magistrate, power of—Evidence of witness partly
against and partly in favour of accused—Evidence
of witness as to what he heard from deceased—
Hearsay evidence—Evidence Act (I of 1872), ss 6,
8, 11, 14—Under s. 436 of the Code of Criminal
Procedure, 1898.

CRIMINAL PROCEDURE CODE—
continued

—s. 436—concluded.

in the ordinary way, viz., by evidence of a primary character, and not by hearsay testimony. *QUEEN-EMPRESS v. SURENDRA NATH SARKAR* (1901)

[5 C. W. N., 574; s.c., I. L. R., 28 Calc., 397]

—s. 436, 437—

See COMPLAINT—DISMISSAL OF COMPLAINT
—EFFECT OF DISMISSAL.

[I. L. R., 28 Calc., 211]

—s. 437—

See COMPLAINT—DISMISSAL OF COMPLAINT
—EFFECT OF DISMISSAL.

[I. L. R., 28 Calc., 102
28 Calc., 457]

See DISCHARGE OF ACCUSED—EFFECT OF
DISCHARGE. I. L. R., 29 Calc., 726

See REVISION—CRIMINAL CASES—MIS-
CELLANEOUS CASES

[I. L. R., 26 Mad., 41]

See SECURITY FOR GOOD BEHAVIOUR
[I. L. R., 24 All., 148]

1.—Further inquiry—Magistrate, power of, to direct further inquiry into offences, some of which formed component parts of an offence of which accused was acquitted—*Indian Penal Code (Act XLV of 1860)*, ss. 147, 223, 342—Rioting, acquittal of Fresh trial for causing hurt—Where an accused person was tried on a charge of being a member of an unlawful assembly with the common object of assaulting the complainant, but was acquitted

offence under s. 312, *Indian Penal Code*, the District Magistrate was not competent to order further inquiry in regard to that offence. *JALRAM ALON GANDYAK v. RAJESWAR UMAR SINGH* (1900)

[5 C. W. N., 72]

2.—*Act V of persons c good beha legal—Complaint—“Discharge,” meaning of —Magistrate, jurisdiction of —Procedure—S. 437 of the Code of Criminal Procedure is the only law*

CRIMINAL PROCEDURE CODE—
continued

—s. 437—concluded.

The terms “accused person” and “discharge” in s. 437 refer to a person accused of an offence who has been discharged of a charge of that offence within the terms of Ch. XIX of the Code. *IMAM MANDAL v. EMPRESS* (1900)

6 C. W. N., 163

3.—*Criminal Procedure Code (Act V of 1899)*, ss. 202, 203, 423 and 437

—Dismissal of complaint—Further inquiry, order for—*Refusal to*

was I
inquir
and t
materials totall
before the High
HABIBI (1902)

—s. 438—

See POSSESSION, ORDER OF CRIMINAL
COURT AS TO . 5 C. W. N., 71

See REFERENCE TO HIGH COURT—CRIMIN-
AL CASES . I. L. R., 24 All., 346

25 All., 128

—s. 439—

See REFERENCE TO HIGH COURT—CRIMIN-
AL CASES . I. L. R., 24 All., 346

See REFORMATORY SCHOOLS ACT (VIII of
1897), ss. 8, 9, 16 . 5 C. W. N., 210

See REVISION—CRIMINAL CASES.

—s. 451—

See JURISDICTION OF CRIMINAL COURT—
EUROPEAN BRITISH SUBJECT.

[I. L. R., 25 All., 511]

—s. 458—

See HABEAS CORPUS, WRIT OF.
[I. L. R., 29 Calc., 286]

—s. 476—

See FALSE CHARGE . 5 C. W. N., 106

See FALSE EVIDENCE—GENERAL CASES.
[5 C. W. N., 630]

See REVISION CRIMINAL CASES—MISCEL-
LANEOUS CASES

[I. L. R., 23 All., 249]

28 Bom., 785

26 Mad., 88

See SANCTION FOR PROSECUTION—NATURE,
FORM AND SUFFICIENCY OF SANCTION.

[I. L. R., 25 All., 231]

See SESSIONS JUDGE, JURISDICTION OF.
[7 C. W. N., 708]

CRIMINAL PROCEDURE CODE— continued.

—s. 478—continued.

(I. L. R., 20 Mad., 400)

2. ————— Code of Criminal
Procedure (Act V of 1899), ss. 195, 476—
of execution—Indian Penal Code (Act

District Judge for revocation of the sanction, and made an order revoking the sanction, and sent the case, under s. 476, to the District Magistrate for inquiry or trial. Held that, in granting the

under s. 476, the consequence had JADU NATH MAHTA v JAGADISH CHANDRA DEB (1902) 7 C. W. N., 423

3. ————— Preliminary inquiry—Sanction for prosecution—Insufficiently stamped document presented for registration Document impounded and sent to Collector—Denial of execution—Inquiry by Deputy Collector Collector, whether a Revenue Court—Penal Code (Act XLV of 1860), s. 471—Stamp Act (II of 1899), ss. 38, 40, 42—The petitioner presented a *kadaliyat*, purporting to have been executed in his favour by one B, for registration. The Sub-Registrar thought the document was insufficiently stamped, impounded it, and sent it to the Collector for orders. The Collector called on B to pay the deficient stamp duty and penalty B submitted a petition denying execution, and the Collector ordered the Deputy Collector to inquire into the fact of the execution. The Deputy Collector reported that the petitioner had failed to prove the execution of the *kadaliyat* by B, and that it was not genuine. Upon that report, and after hearing the

under s. 476, the consequence had that the order for prosecution was made without

CRIMINAL PROCEDURE CODE— continued.

—s. 478—concluded.

jurisdiction, as neither the Collector nor the Deputy Collector acted as a Court, and the inquiry by the latter was not a judicial inquiry, having been held solely for the purpose of determining who should be called on to pay stamp duty. KEDAR NATH GHOSH v. EMPEROR (1903) 7 C. W. N., 785

—s. 477—

See CHARGE—FORM OF CHARGE
(I. L. R., 28 Calc., 434)

See FALSE EVIDENCE—GENERAL CASES
(5 C. W. N., 815, 830, 830)

—s. 487—

See MAGISTRATE—POWERS OF MAGISTRATES I. L. R., 24 Mad., 262

See SESSIONS JUDGE, JURISDICTION OF.
(7 C. W. N., 708)

—s. 488—

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO I. L. R., 25 All., 545

—ss. 488, 489, 490—

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO I. L. R., 25 All., 165

—s. 491—

See HAZARAT CORPUS, WRIT OF
(I. L. R., 29 Calc., 288)

—s. 494—

See WITNESS—CRIMINAL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES
(I. L. R., 25 Bom., 422)

—s. 495—

See GAMBLING—BOM. ACT IV OF 1887
(I. L. R., 26 Bom., 533)

—s. 503—

See COMMISSION—CRIMINAL CASES.

—s. 511—

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS.
(I. L. R., 23 Calc., 689)

—s. 514—

See RECOGNIZANCE TO APPEAR
(I. L. R., 30 Calc., 107)

—s. 517—

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE
(I. L. R., 30 Calc., 690)

See STOLEN PROPERTY—DISPOSAL OF, BY THE COURT I. L. R., 25 Bom., 702

CRIMINAL PROCEDURE CODE—

CRIMINAL PROCEDURE CODE—

*continued**continued.*

—s. 522—

—s. 528—*concluded.*

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS.

[I. L. R., 29 Calc., 724]

[5 C. W. N., 886]

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPOSSESSION BY CRIMINAL FORCE

See TRANSFER OF CRIMINAL CASE—GENERAL CASES

[7 C. W. N., 114]

I. L. R., 24 Mad., 317

= 26 Mad., 394

—“Criminal force,” meaning of—Order for restoration of immovable property—The term “criminal force,” as used in s. 522 of the Code of Criminal Procedure, must be understood as defined in s. 350 of the Penal Code; and, to justify an order for the restoration of possession of immovable property under s. 521, Criminal Procedure Code, the dispossession must have been by the actual use of criminal force, and not merely by the show of such force. *Ram Chandra Borai v. Jyandaria* (1897), 2 C. W. N., 805, and *Ishan Chandra Kolla v. Dina Nath Bhadak* (1899), 4 C. W. N., 307, followed. *Srinabi Shome v. Lal Khan* (1900), [5 C. W. N., 250]

—s. 529 (7)—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS

[5 C. W. N., 886]

—s. 530—

See CRIMINAL PROCEEDINGS.

[5 C. W. N., 252]

I. L. R., 24 Mad., 675

—s. 523—

cl. (j)—

See CRIMINAL PROCEEDINGS

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS

[5 C. W. N., 886]

[I. L. R., 26 Bom., 552]

—Criminal Procedure Code (Act I of 1898), ss. 517, 523—Disposal of property taken by police as stolen property—Adjudication of theft case, whether absolutely necessary before order for

—s. 531—

See CRIMINAL PROCEEDINGS

[I. L. R., 26 Mad., 840]

—s. 533—

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS.

6 C. W. N., 840

—s. 536—

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[I. L. R., 26 Mad., 243]

—s. 537—

See APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM.

[I. L. R., 26 Mad., 1]

—s. 526—

See ACCUSED PERSON. 5 C. W. N., 110

See CRIMINAL PROCEEDINGS.

[5 C. W. N., 252]

See SECURITY FOR GOOD BEHAVIOUR.

[I. L. R., 29 Calc., 392]

See TRANSFER OF CRIMINAL CASE

—s. 528—

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES

[5 C. W. N., 488]

See MAGISTRATE—

POWERS OF MAGISTRATE;

[I. L. R., 26 Mad., 130]

WITHDRAWAL OF CASES

[I. L. R., 30 Calc., 693]

See ASSESSORS

[I. L. R., 25 Bom., 694]

= 24 Mad., 523

See CRIMINAL PROCEEDINGS.

[I. L. R., 28 Calc., 104]

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS.

6 C. W. N., 840

See JOINDER OF CHARGES.

[5 C. W. N., 294, 888]

I. L. R., 29 Calc., 385

= 26 Mad., 125

See JURY—JURY IN SESSIONS CASES—CHOOSING JURY.

7 C. W. N., 188

[I. L. R., 26 Mad., 598]

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—EVIDENCE, MODE OF TAKING, ETC..

5 C. W. N., 544

CRIMINAL PROCEDURE CODE—

concluded.

—s. 540—

See WITNESS—CRIMINAL CASES—

SUMMONING WITNESSES ;

[8 C. W. N., 98]

EXAMINATION OF WITNESSES—

EXAMINATION BY COURT

[I. L. R., 29 Calc., 387]

—s. 545—

See COMPENSATION—CRIMINAL CASES—

FOR LOSS OR INJURY CAUSED BY

OFFENCE. I. L. R., 24 Mad., 305

—s. 556—

See MAGISTRATE—GENERAL JURISDICTION

[I. L. R., 24 Mad., 238]

See SESSIONS JUDGE, JURISDICTION OF.

[7 C. W. N., 708]

—s. 562—

See FIRST OFFENDERS

[I. L. R., 24 All., 308]

CRIMINAL PROCEEDINGS.

—expenses of—

See HINDU LAW—ALIENATION—ALIENATION

BY WIDOW—WHAT CONSTITUTES

LEGAL NECESSITY. 6 C. W. N., 648

1.—Complaint disclosing graver offence—

Summary trial—Complaint disclosing facts con-

stituting offence of —

CRIMINAL PROCEEDINGS—continued.

filed against a person, the Magistrate is bound to dispose of the case, and, if no evidence is offered against the person accused, he must be discharged. The complainant, by omitting to take out a summons against such person, cannot keep a charge hanging over him for an indefinite time. The summons is

Where property is seized under a search-warrant, the Magistrate must proceed to make inquiry as to whether it is of the same nature as the property seized.

It is held that the proceedings in these Courts are conducted with such reasonable expedition as will prevent the parties from being improperly harassed by undue delay. In *Ratanlal Rangisidha* (1892), I. L. R., 17 Bom., 743, doubted. In the matter of *Lakshman Govind Nimgude* (1902)

[I. L. R., 29 Bom., 552]

3.—Irregularity—Criminal Procedure Code (Act V of 1898), s. 202—Failure to "record reasons" for postponing issue of process and enquiring into case—By s. 202 of the Criminal Procedure Code, if a

4.—Misjoinder—Joint trial—Misjoinder of parties—Discharge of accused on ground of misjoinder by Sessions Judge—Direction that accused be re-tried—Jurisdiction—Code of Criminal Procedure (Act V of 1898), ss. 233, 239, 423 and 537—Penal Code (Act XLV of 1860), ss. 311, 312 and 109—M and E were convicted at the same trial of receiving stolen property, namely, currency notes, as well as of assisting in concealing or disposing of such notes, which they knew or had reason to believe were stolen property. Each of them was charged with the same offences only in respect of a currency note of Rs500, but in respect of the charges on two other notes of Rs100 each the charges against each of them related only to one of these notes. Held that there had been a misjoinder of parties, the transactions being altogether separate and distinct again.

Sessions Judge on the ground to add to the charges should be relevant to the charges which should be taken in such a matter, and it was not intended by the order of discharge in the case of *Queen-Empress v. Chandu Singh* (1857), I. L. R., 16

CRIMINAL PROCEEDINGS—continued.

Calc., 395, to free the accused in that case from the consequences of his acts or to declare that no order for re-trial could be passed in such a case. *Queen-Empress v. Fakirapa* (1890), I. L. R., 15 Bom., 491, and *Empress of India v. Murari* (1881), I. L. R., 4 All., 147, referred to. *KUMUDINI KANTA GUHA v. QUEEN-EMPRESS* (1900) . I. L. R., 28 Calc., 104

5.—Necessity for charge, finding and sentence—*Insolvent Act* (11 & 12 Vict., c. 21), ss 47 and 50—Offence under s. 50 a criminal offence—Charge, etc., must be framed to sustain conviction and sentence—Opposing creditors—Grounds of opposition should be stated in clear terms—Practice—Procedure.—Insolvents were

ment was wrongly made. s. 41 of the insolvent Act provides the machinery by which the grounds of opposition to a debtor's discharge may be inquired into and precisely defined before the hearing. IN RE VALLABHDAS JAIRAM (1903)

[I. L. R., 27 Bom., 394]

6.—Powers of Magistrate—Criminal Procedure Code (Act V of 1898), s. 530—Trial of an accused by Magistrate not empowered by law—Charge of giving false evidence under s. 193, Indian Penal Code—Trial by First-class Magistrate though facts disclosed offence under s. 194 as

CRIMINAL PROCEEDINGS—concluded.

trate were not void within the meaning of s. 530 of the Code of Criminal Procedure. *Queen-Empress v. Gundga*, I. L. R., 13 Bom., 502, referred to. *KING-EMPEROR v. AYYAN* (1901)

[I. L. R., 24 Mad., 675]

7.—Proceedings in wrong place—Criminal Procedure Code (Act V of 1898), s. 531.—S. 531 of the Code of Criminal Procedure applies to a case where a Magistrate who has authority to commit a case for trial does so, but has not territorial jurisdiction in the place where the offence to be tried is alleged to have been committed. *RAYAN KUTTI v. EMPEROR* (1903) . I. L. R., 26 Mad., 640

CRIMINAL TRESPASS.

1.—House trespass—Act XLV of 1860 (Indian Penal Code), s. 457—House trespass by night with intent—Alleged intent, theft—Proved

in order to have sexual intercourse with a woman who he knew was the wife of the complainant, and further that he did so without the husband's consent, and the accused was convicted: it was held that the conviction was proper. It was not necessary under the circumstances that the complainant should bring a specific charge of adultery. *Brijbas v. The Queen-Empress* (1896), I. L. R., 19 All., 74, referred to. *QUEEN-EMPRESS v. KANGLA* (1900)

[I. L. R., 23 All., 82]

2.—Penal Code (Act XLV of 1860), ss. 441, 443—House trespass—

Code, and making no order in respect of the other accused, as he considered the imprisonment already undergone was sufficient. Held that the order was wrong, as the proceedings of the First-class Magis-

[I. L. R., 26 Bom., 558]

CROPS.

—attachment of—

See PENAL CODE, s. 206.

(I. L. R., 28 Calc., 217)

—removal of—

See PENAL CODE, s. 424

(I. L. R., 26 Mad., 481)

—standing—

See NORTH-WESTERN PROVINCES RENT
ACT (XII OF 1891), s. 43

(I. L. R., 25 All., 282)

See POSSESSION, ORDER OF CRIMINAL
COURT AS TO—ATTACHMENT OF PRO-
PERTY. I. L. R., 30 Calc., 110**CROSS-DECREE.**

See SET-OFF—CROSS-DECREE.

CROSS-EXAMINATION.See WITNESS—CIVIL CASES—EXAMINA-
TION OF WITNESSES—CROSS-EXAMINA-
TION.See WITNESS—CRIMINAL CASES—EXAMINA-
TION OF WITNESSES—CROSS-EX-
AMINATION—of accused, by Magistrate, during police
investigation—See TRANSFER OF CRIMINAL CASE—
GROUND FOR TRANSFER

(5 C. W. N., 264)

—of witness on commission—

See PRACTICE—CIVIL CASES—COMMI-
SSION. I. L. R., 30 Calc., 625**CROSS-OBJECTION.**See APPEAL—OBJECTIONS BY RESPON-
DENT. I. L. R., 30 Calc., 655**CROWN.**

See PREROGATIVE OF THE CROWN.

—prerogative right of, to discontinue
prosecution—

See RIOTING. 7 C. W. N., 301

CROWN GRANTS ACT (XV OF 1895).

See CROWN LANDS.

(I. L. R., 26 Mad., 268)

CROWN LANDS.—Alienation of Crown lands—23 & 23 Vict.,
cap. 41, etc.—Power of Governor in Council to
alienate through authorised agent under *dharkast***CROWN LANDS—concluded**rules—Alienation so made binding and irrevoc-
able—Jurisdiction of Civil Court to determine
validity of grant under *dharkast* rules—Assignment
of waste, duly made in accordance with *dharkast*
rules, not liable to revision by anyone—The Civil
Courts have jurisdiction to determine whether a
grant of land, alleged to have been made by
an officer on behalf of the Crown, is binding on
the Crown or not.purports to have been made under the *dharkast* rules
by an officer empowered by them to make it is athat behalf; and his acts, if within the scope of his
authority, are as binding on the Crown as if they had
been done by the Governor in Council. Where such
a grant has been made, the action of the officer to
whom an appeal lies with reference to it is final and
binding on the Government, if his act was within the
scope of his authority. His action is not subject to
any other control. And when the proposal of an
applicant is accepted by an officer duly authorised in
that behalf by the *dharkast* rules, and the acceptance
is communicated to the applicant, there is a valid
contract and disposal of the land (unless the grant
was procured by fraud, misrepresentation or mutual
mistake as to any matter of fact essential to the
agreement). Such a grant cannot, therefore, be
annulled or revoked by the officer who made theappeal being preferred in his observations by
BRASHTAM AFFANGAR, J., on applications by the**CRUELTY TO ANIMALS.**See PREVENTION OF CRUELTY TO ANIMALS
ACT (XI OF 1890)**CULPABLE HOMICIDE.**

See MURDER.

CUSTODY.

See ESCAPE FROM CUSTODY.

—of lunatic—

See LUNACY. I. L. R., 30 Calc., 273

CUSTOM.

See HINDU LAW—

CUSTOM;

INHERITANCE—MIGRATING
FAMILIES

[I. L. R., 29 Calc., 433

See MAHOMEDAN LAW—CUSTOM.

See MALABAR LAW—CUSTOM

See NORTH-WESTERN PROVINCES RENT ACT
(XII OF 1881), CR. II AND S. 93

[I. L. R., 23 All., 270

See PRESCRIPTION—EASEMENTS—PRIVACY
. 5 C. W. N., 147See RIGHT OF OCCUPANCY—TRANSFER OF
RIGHT 5 C. W. N., 181, 861

See RIGHT TO USE OF WATER

[I. L. R., 29 Calc., 100

See SUCCESSION L. R., 30 I. A., 190

— of trade—See DAMAGES—SUITS FOR DAMAGES—
BREACH OF CONTRACT.

[I. L. R., 29 Calc., 328

— exclusion of—

See LEASE—CONSTRUCTION

[I. L. R., 30 Calc., 883

UTCHI MEMONS.See HINDU LAW—MARRIAGE—EVIDENCE
AS TO, AND PROOF OF, MARRIAGE.

[I. L. R., 27 Bom., 485

D .**DACOITY.**See EVIDENCE—CRIMINAL CASES—DYING
DECLARATIONS,

[I. L. R., 25 Bom., 45

See WHIPPING.

[I. L. R., 25 Bom., 712

1.—Attempt—Act XLV of 1860 (Indian Penal Code), ss 397, 511—Attempt to commit dacoity—Use of arms in endeavouring to effect escape—Conviction under what sections to be recorded—Where several persons were found endeavouring to break into a house, and some of them, being armed, used violence, but only in attempting to escape being arrested, it was held that they could not properly be convicted under s 397, read with s 511, of the Indian Penal Code *Queen v. Koonce* (1867), 7 W. R. Cr. R., 48, referred to. *QUEEN-EMPRESS v. BENI* (1900) . I. L. R., 23 All., 78

2.—Act XLV of 1860 (Indian Penal Code), s 402—Assembling for the purpose of committing dacoity—Evidence.—Several persons were found at 11 o'clock at night on a road just outside the city of Agra, all carrying arms

DACOITY—concluded

(guns and swords) concealed under their clothes.

stances *Alia* that these persons were rightly convicted under s 402 of the Indian Penal Code of assembling together with intent to commit dacoity. *The Deputy Legal Remembrancer v. Karuna Bais-tobi* (1894), I. L. R., 23 Calc., 164; *Balmakand Ram v. Ghansam Ram* (1894), I. L. R., 22 Calc., 391; and *Queen-Empress v. Papa Sani* (1899), I. L. R., 23 Mad., 159, referred to. *QUEEN-EMPRESS v. BHOLU* (1900) . I. L. R., 23 All., 124

3.—Dacoity with murder—Penal Code (Act XLV of 1860), ss. 395, 396—Dacoity attended with murder—Ingredients necessary to constitute the offence—Causing of death or hurt, etc., not for the purpose of committing theft—The first essence of an offence under s 396 of the Penal Code is that the dacoity is the joint act of the persons concerned, and the second essence of the offence is that the murder is committed in the course of the commission of the dacoity in question. The essence of the offence of robbery involved in the offences under ss 395 and 396 is that the offender, for the end of committing theft or carrying away or attempting to carry away properties obtained by theft, voluntarily causes or attempts to cause to any person death, or hurt, or wrongful restraint, or fear of instant death or of instant hurt or of instant wrongful restraint. When several persons are found to have attacked and assaulted some other person or persons, not for the purpose of carrying out the object of looting property, but quite independently of it, the main element

4.—Possession of stolen property—Penal Code (Act XLV of 1860), ss. 395, 411—Charges of dacoity and receiving stolen property—Charge to jury—Possession of stolen property—Misdirection

directed them that the fact of a stolen shirt having been found in possession of the accused two months after the dacoity, was sufficient to justify them in convicting the accused of the dacoity. *Held*, on appeal that the charge was misdirection. *W. R. Cr. R.*

It was put to him in the positive way which the Judge adopted. *GUZZALA HANUMAN v. EMPEROR* (1902) . I. L. R., 23 Mad., 487

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DAMAGES.

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1. SUITS FOR DAMAGES—

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2. MEASURE AND ASSESSMENT OF DAMAGES—

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See MESNE PROFITS—ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS . I. L. R., 28 Calc., 540

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 [I. L. R., 26 Bom., 519]

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—measure of, when riyat dispossessed—

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1. SUITS FOR DAMAGES.

(a) BREACH OF CONTRACT.

1.—Agreement to purchase—Notice—Agreement to purchase—Failure to do so—In an agreement made by the defendant with the

the contract and intimating that on his leaving to do so they would sell the property. *TUKUN SINGH v. HONUMAN DAS* (1902) . 7 C. W. N., 108

2.—Executory contract—Municipality—Bombay District Municipal Act Amendment Act (Bom Act II of 1954), s 80—Breach of executory contract—Binding character.—In a suit for damages

3.—Proof—Proof of inferiority of quality—Examination of samples from portions of bulk—Method of ascertaining damages—Method established and recognized in the trade—In a suit for damages by a purchaser of goods on the ground of their being below the guaranteed standard of quality, if it is clear from the evidence that such is not

if the method of ascertaining damages appears to be established and recognized in the trade, the plaintiff need not show how he has dealt with the goods delivered to him, and whether he has suffered any and what loss by reason of the goods not being up to the warranted standard. *BOISOGOMOFF v. KHARAPET JUTE COMPANY* (1902)

[I. L. R., 29 Calc., 323; s.c., 6 C. W. N., 495]

(b) TORT

4.—Assault—Cause of action—Assault on provocation—Right of self defence—An assault, which the defendant had committed on the plaintiff upon some provocation, was found to have been of a very gross character and not altogether justified. Held that an action for damages lay against the defendant, and that the fact that the defendant had been fined by a Criminal Court was no bar to it. *AKHIL CHANDRA BISWAS v. AKHIL CHANDRA DEY* (1942)

[8 C. W. N., 915]

DAMAGES—continued.**2. MEASURE AND ASSESSMENT OF DAMAGES.****BREACH OF CONTRACT.**

5.—Assessment of damages—Contract—Breach of contract to deliver goods—Market prices at due date—Suit in High Court cognizable by Small Cause Court—Decree in such suit for less than Rs. 1,000—Costs—Small Cause Courts Act (XV of 1882), s. 20, as amended by s. 11 of Act I of 1908.

C.J.—Obviously, value created for special purposes is irrelevant, and it is for this reason that the prices made by Bulls and Bears are of no use. If the market value is uncertain, then we must have recourse to such surrounding circumstances as affect the probabilities, and, among them, to real prices proved about the time of due date. The plaintiffs sued the defendants for damages for non-delivery of cotton, the question between them being the market rate on the 25th May, 1900, the date on which delivery should have been made. The 24th May was a holiday, and it was proved beyond dispute that on the 23rd the rate was Rs. 225 per *khandi*. The plaintiffs alleged that on the 25th the price was Rs. 240 per *khandi*; the defendant alleged that it was Rs. 217 per *khandi*, and counter-claimed accordingly. The plaintiffs adduced evidence of five cases of alleged actual dealings at Rs. 220 per *khandi* on the 25th May. The lower Court, however, was not satisfied that a market rate was made in relation

to the market on the 25th May, and the conclusion might be drawn that the real rate on the 25th May was not less than Rs. 225. How much more it was, the

which damages should be assessed. The Court of Appeal accordingly varied the decree of the Court below, and passed judgment for the plaintiffs. The question then arose whether, having regard to s. 20 of the Small Cause Courts Act (XV of 1882), as

DAMAGES—concluded.**2. MEASURE AND ASSESSMENT OF DAMAGES—concluded.****BREACH OF CONTRACT—concluded.**

amended by s. 11 of Act I of 1895, the plaintiffs were entitled to the costs, the decree in their favour being for less than Rs. 1,000. *Held* that no costs could be given. The mere fact that the plaintiffs claimed a sum in excess of the Small Cause Court jurisdiction was not enough to take the case out of the operation of s. 20. The result of the suit

claim, and no more, but none of the general costs of suit or the costs incurred in connection with the plaintiff's claim. No costs of the appeal. **SHRIDHAN GOPINATH v. GORDHANDAS GOKULDAS (1901)** I. L. R., 28 Bom., 235

not purchase any coal against defendant's contract. The plaintiff now sued for damages for breach of the contract. The only question was as to the mode of assessing damages. There was practically no coal in Bombay of the description contracted for at the dates at which delivery should have been given, and consequently no market rate could be proved. At

case, and in the absence of any evidence as to a market rate, the figures given in this statement might properly be received in evidence for the purpose of fixing the actual value of the coal at the dates of breach, thus affording a measure of the damages suffered. **JUGMOHANDAS VURJIVANDAS v. NUSSEERWANJI JEMANGIR KHAKHATA (1902)**

[I. L. R., 28 Bom., 744]

DAMDUPAT, RULE OF.

See HINDU LAW—USURY.

[I. L. R., 28 Mad., 662.]

DAUGHTER.

See HINDU LAW—INHERITANCE—

SPECIAL HEIRS—FEMALES—DAUGHTERS;

DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—UNCHASTITY.

[I. L. R., 28 Mad., 509.]

DAUGHTER—concluded.*See* HINDU LAW—

MAINTENANCE—RIGHT TO MAINTENANCE—DAUGHTER;

MARRIAGE—NO OBLIGATION TO GET DAUGHTER MARRIED

[I. L. R., 28 Mad., 505]

DAUGHTER-IN-LAW.*See* HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—SON'S WIDOW.**DAUGHTER'S SONS.***See* HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP.

[I. L. R., 29 I. A., 156]

DEADLY WEAPON.*See* UNLAWFUL ASSEMBLY.

[7 C. W. N., 512]

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—of appellant—

See ABATEMENT OF SUIT—APPEALS

[I. L. R., 28 Bom., 587]

See PARTIES—SUBSTITUTION OF PARTIES—APPELLANTS . I. L. R., 28 Bom., 317

—of defendant—

See DEFENDANT, DEATH OF.

—of donor—

See REGISTRATION ACT, 1877, s. 17

[I. L. R., 25 Mad., 672]

—of intending plaintiff—

See CIVIL PROCEDURE CODE, s. 424

[I. L. R., 25 All., 187]

—of joint appellant, pending appeal—

See CIVIL PROCEDURE CODE, s. 544

[I. L. R., 27 Bom., 284]

—of judgment-debtor—

See CIVIL PROCEDURE CODE, 1882, s. 108

[I. L. R., 29 Calc., 33]

See SURETY—LIABILITY OF SURETY.

[I. L. R., 24 Mad., 637]

—of party to civil proceedings—

See ABATEMENT OF SUIT—APPEALS.

[I. L. R., 25 All., 27]

—of plaintiff—

See PLAINTIFF, DEATH OF

—of respondent—

See ABATEMENT OF SUIT—APPEALS.

[I. L. R., 23 All., 22]

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DEBTS;

JOINT FAMILY—DEBTS, AND JOINT FAMILY BUSINESS;

PARTITION—EFFECT OF PARTITION.
[I. L. R., 24 Mad., 555]*See* IMPRISONMENT . 5 C. W. N., 145*See* INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—EXECUTION OF DECREE

[I. L. R., 30 Calc., 407]

See JUDGMENT-DEBT.*See* MAHOMEDAN LAW—DEBTS.

—assignment of—

See INSOLVENT DEBTORS ACT, s. 23

[I. L. R., 25 Mad., 408]

—dishonestly or fraudulently preventing debt being available for creditors—

See PENAL CODE, s. 422

[I. L. R., 28 Calc., 314]

—joint—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

—part payment of—

See LIMITATION ACT, 1877, s. 20

[8 C. W. N., 766]

—recovery of—

See PROMISSORY NOTES—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES

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DEBTOR.*See* DEBTOR AND CREDITOR.*See* EXECUTOR . 7 C. W. N., 476*See* INSOLVENCY*See* JOINT DEBTORS

—arrest of—

See ARREST—CIVIL ARREST.**DEBTOR AND CREDITOR.***See* EXECUTION OF DECREE*See* RECEIVER . I. L. R., 30 Calc., 937

—fraudulent conveyance—

See TRANSFER OF PROPERTY ACT, s. 53.

[I. L. R., 25 Bom., 202]

DEBTOR AND CREDITOR—concluded.

—*Fraudulent assignment—Suit by creditor to set aside—Suit by creditor on his own behalf and also on behalf of all creditors—Civil Procedure Code (XIV of 1882), s. 30—Misjoinder—Practice—Notice of assignment—Mahomedan law—Mushaa—Assignment of undivided share.*—On the 25th July, 1898, the plaintiff obtained a decree against the second defendant, and in execution attached (as belonging to the said defendant No. 2) a one-third share of the interest accruing upon certain moneys in the hands of the Accountant General of Bombay. The said one-third share was thereupon claimed by the first defendant (wife of defendant No. 2), who alleged that it had been assigned to her by her husband (defendant No. 2) by a deed of assignment executed by him on the 15th October,

attachment as such. The suit was brought by the plaintiff in his own right and also on behalf of all the other creditors of defendant No. 2. It was objected on behalf of the defendants that this was a misjoinder

rule did not apply, inasmuch as the assignment was of a definite share of the money in the hands of the Accountant General. On the merits the plaintiff's claim was dismissed. **EBRAHIMBAI RAHIMBAI v. FUZBAI** (1902). I. L. R., 26 Bom., 577

DECEASED PERSON.

—statements of—

See EVIDENCE ACT, s. 32

[I. L. R., 25 All., 143, 238]

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4. REMOVING ATTACHMENT	"
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[I. L. R., 24 Mad., 243]

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—enforcing attachment—

See CIVIL PROCEDURE CODE, s. 244—
PARTIES TO SUIT.

[I. L. R., 28 Cal., 492]

1 SUITS CONCERNING DOCUMENTS

1.—*Oudh Rent Act (XXII of 1886)—Jurisdiction of Civil Court—Specific Relief Act, 1877, ss. 39, 42—Limitation Act, Sch. II, Arts. 91, 120—Contract Act, 1872, s. 229—Transfer of Property Act, 1882, s. 3.*—In a suit on June 4, 1894, for possession of a village, or, alternatively, for a declaration that the defendant had no right therein and was liable to be ejected by an ordinary notice of ejection, it was admitted that under the Oudh Rent Act of 1886 the Civil Court had no jurisdiction to grant either relief. *Held* that, as it appeared that the substantial object of the suit was to cancel an instrument of lease relied on by the defendant, with a view to an order of ejection in the Revenue Court, it was competent, under either s. 39 or s. 42 of the Specific Relief Act, 1877. Two Courts having found as a fact that the plaintiff only came to know of the said lease on June 24, 1891, it was not excess

whether under Art. 91 or Art. 120 of Sch. II to the Limitation Act. **RAMPAL SINGH v. BALBHADDAR SINGH** (1902). I. L. R., 28 I. A., 203; [s.c. I. L. R., 25 All., 1; C. W. N., 849]

2.—*Practice—Procedure—Pending suit—Another suit based on the defence in the first suit—Specific Relief Act (I of 1877), s. 39—Cancellation of instrument.*—On the 16th March, 1899, the firm of Chhaganlal Haribhai brought suit No. 96 of 1899 against Dhondu and Baba to recover a sum due on a bond passed by them to the firm. The defence pleaded that the bond was void, being passed for the balance due on wagering transactions. While this suit was pending, on the 13th June, 1899, Dhondu (one of the defendants in the suit) brought suit No. 107 of 1899 to have the said bond cancelled.

39 of the
Subordinate
is dismissed
sim in the
relief pro-

DECLARATORY DECREE, SUIT FOR— continued.

1. SUITS CONCERNING DOCUMENTS— concluded.

previous suit. **CHHAGANLAL HARIBHAI v. DHONDU CHUDAMAN RANGRI** (1903)

[I. L. R., 27 Bom., 607]

■ ADOPTION.

3.—*Guardians and Wards Act (VIII of 1890)*, s. 49—S. 49 of the Guardians and Wards Act does not prevent a widow, who has been appointed by the District Judge under that Act to be guardian of a minor as her husband's adopted son, from maintaining a suit for a declaration that the minor was not the adopted son of her husband. **RAKHAL MONI DASSI v. ADWITYA PRASAD ROY** (1903)

[I. L. R., 30 Calc., 613; s. c., 7 C. W. N., 419]

3 ENDOWMENT.

4.—*Civil Procedure Code (Act XIV of 1882)*, s. 539—S. 539 for declaration that the defendants were not dharmakartas of certain temples, and for the appointment of trustees—No claim for temple property—*Specific Relief Act (I of 1877)*, s. 42—*Maintainability*—A suit for the appointment of new trustees to a temple, on the ground that the defendants are not the lawful trustees and that the trusteeships are therefore vacant, is a suit under s. 539 (a) of the Code of Civil Procedure, being comprised in the words "whenever the direction of the Court is desired in any suit for the appointment of trustees."

Act, by reason of the fact that no consequential relief is claimed, even if there be temple properties in the possession of the defendants as dharmakartas. Where a suit is maintainable under s. 539 of the Code of Civil Procedure, and the plaintiff seeks the relief specified in that section, s. 42 of the Specific Relief Act does not apply. **Srinivasa Ayyangar v. Srinivasa Swami**, I. L. R. 16 Mad., 31, distinguished. New trustees appointed under cl. (a) of s. 539 of the Code of Civil Procedure will be entitled to demand possession of the temple properties from the defendants in the suit whose title to administer the trust has been negatived by the decree, and, if such possession be not given, will be entitled to bring a suit to eject them from the temple and its endowments. **NETI RAMA JOGIAH v. VENKATA CHABULU** (1902).

[I. L. R., 26 Mad., 450]

4 REMOVING ATTACHMENT

5.—*Execution of decree—Rights of attaching creditor—Suit by one attaching creditor for declaration that property cannot be attached by another creditor on the ground that the second creditor's decree was bad in law—Cause of action*—The plaintiffs, as judgment-debtors who had attached under a decree for money certain immovable property of their judgment-debtors, sued another judgment-debtor who attached the same property, asking for

DECLARATORY DECREE, SUIT FOR— continued.

4. REMOVING ATTACHMENT—concluded.

a declaration that the property attached was not saleable in execution of the second judgment-debtor's decree. The suit was based upon the allegation

(1897), I. L. R., 25 Calc., 1, and **Malkaryan v. Narhar** (1900), I. L. R., 25 Bom., 337, referred to **LACHMI DAYAL v. HAR DANNI LAL** (1903)

[I. L. R., 25 All., 347]

5 MISCELLANEOUS SUITS.

6.—*Consequential relief—Court-fees Act (VII of 1970)*, Sch. II, Art. 17, cl. (iii), and s. 7, cl. (c) (c)—A suit in which the only prayer is to have it declared that a certain decree is ineffectual and inoperative against the plaintiffs is a suit for a declaration that a certain decree is ineffectual and inoperative.

7.—*Membership of tarwad—Civil Procedure Code (Act XIV of 1882)*, s. 13—*Res judicata—Suit in Subordinate Court—Previous suit in Munsif's Court—Valuation of a suit for declaration as to membership of tarwad—Specific Relief Act (I of 1877)*, s. 42—A suit was brought in the Court of a Subordinate Judge for a declaration that the plaintiffs and defendants therein had no community of interest and were not members of a tarwad having joint property. The property of the tarwad was valued by plaintiffs at Rs. 2,000, and this was held to be a true valuation, but it appeared that the value of the plaintiffs' interest in it was Rs. 2,000 only. In

the Specific Relief Act. The value of a suit for a declaration that certain persons are or are not members of a tarwad is the value of the share of the tarwad property which would be allotted to them if a partition were made by common consent. **PANGA v. UNNIKUTTI** (1900)

[I. L. R., 24 Mad., 275]

8.—*Mortgage—Act I of 1877 (Specific Relief Act)*, s. 42—*Burden of proof—Easfractuary*

DECLARATORY DECREE, SUIT FOR—concluded.**5. MISCELLANEOUS SUITS—concluded.**

maintains in mortgagee seeking a declaration that

another mortgagee is in possession of the property

and was still in possession, but that his mortgage still subsisted and had not been discharged.

CHITTA SINGH v. DEB DIN (1901)

[I. L. R., 24 All, 170]

9.—Will—Specific Relief Act (I of 1877).

grievance in mortgagee seeking a declaration that

another mortgagee is in possession of the property

and his brother's son for a declaration of invalidity of a will, which purported to have been executed by his late father, and by which certain property had been bequeathed to one of the defendants. Plaintiff claimed that the property was ancestral; that he was entitled to his share in it by right of survivorship, and that the testator had no power to bequeath it

to

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EXPECTANCY.

[I. L. R., 28 Calc., 483]

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[7 C. W. N., 574]

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See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS

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[6 C. W. N., 91]

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See SET-OFF—CROSS-DECREES.

—consent—

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[5 C. W. N., 877]

—construction of decree—mortgage—

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DISPUTES AS TO RIGHT OF WAY
WATER, ETC., 6 C. W. N., 161

DECREE—continued**—Magistrate to respect—concluded.**

See NUISANCE—UNDER CRIMINAL PROCE-
DURE CODE . 6 C. W. N., 466

—on compromise—

See COMPROMISE—COMPROMISE OF SUITS
UNDER CIVIL PROCEDURE CODE
[5 C. W. N., 485]

—reversal of—

See RIGHT OF SUIT—FRAUD.
[7 C. W. N., 353]

**—reversal of whole, on appeal by one
defendant—**

See CIVIL PROCEDURE CODE, s. 544.

**—set aside; application for refund of
amount of—**

See LIMITATION ACT, 1877, SCH. II, ARTS
178, 179 . I. L. R., 28 Calc., 118.

—transfer of, for execution—

See CIVIL PROCEDURE CODE, s. 232
[I. L. R., 29 Calc., 235.

See SET-OFF—CROSS-DECREES

[I. L. R., 26 Mad., 428]

**—variation of, on appeal by some of joint
appellants—**

See CIVIL PROCEDURE CODE, s. 544
[I. L. R., 25 Bom., 699.]

1 CONSTRUCTION OF DECREE**(a) CONSENT DECREE**

1.—*Breach of contract by decree-holder*—By a
consent decree on a mortgage it was provided that,
if the decree-holder received a fixed sum by a fixed

the price, execute a deed of consent. Held that it
was a breach of contract by the decree-holder to

money was
made of all
entered it
the fixed
could only
is in the
same position as if he had refused a tender thereof.
HARENDRA LAL ROY CROWDNEY v. MANABEND
DASI (1901)

[I. L. R., 28 Calc., 557;
s.c., 5 C. W. N., 538;
I. R., 28 I. A., 89]

DECREE—continued.**1. CONSTRUCTION OF DECREE—concluded.****(b) MORTGAGE.**

2.—Decree on mortgage—Interest up to date of payment—Transfer of Property Act (IV of 1932), ss 88 and 97—Civil Procedure Code (Act XIV of 1932), Sch IV, Form 109—Construction of decree—Ambiguity.—Where there is no ambiguity in a decree, the duty of the executing Court is to carry the orders of the decree into effect, as being conclusive between the parties, whether it may or may not be disputable in point of law. It is competent for a Court passing a mortgage decree to give interest beyond the date fixed

the presumption that s 88 was framed with reference not to the running of interest but to the determination of the time for redemption or sale alternatively, and the form of suit sanctioned by Form No. 109 of Sch IV, Civil Procedure Code, s 88 of the Transfer of Property Act should not be so

HABIBAH
A., 35;
I. L. R., 23 All., 181

■ ALTERATION OR AMENDMENT OF DECREE.

■—Compromise—Civil Procedure Code (Act XIV of 1932), s 206—"Judgment"—Consent decree—Amendment—Clause not contained in petition of compromise, added in decree—True intention of parties—Where, the parties to a suit having entered into a compromise, a decree was ordered to be entered up in terms of the petition of compromise, but, owing to some ambiguity in the petition of compromise, a passage, which was not contained in the petition, was inserted in the decree with the knowledge and consent of both parties: **Held** that the decree gave expression to the true intention of the compromising parties, and ought not to be amended. *Per* MACLEAN, C.J.—The judgment here (ordering a decree to be entered up in terms of the petition of compromise) was not such a judgment as is contemplated by s 206, Civil Procedure Code, there being no expression of judicial opinion on the merits of the case **RAMESHWAR PRASAD NARAIN SINGH v. CHANDRESHWAR PRASAD NARAIN SINGH** (1933) 7 C. W. N., 880

DECREE—concluded.**2. ALTERATION OR AMENDMENT OF DECREE—concluded.**

4.—Limitation—Civil Procedure Code (Act XIV of 1932), s 206—Limitation Act (XV of 1877), Sch. II, Art. 179 (3).—A decree was passed on 31st December, 1892, and no appeal was presented by either party therefrom. Defendant No 2, however, filed a petition for amendment of the decree in respect of the costs, which was granted on the 6th October, 1893. On 6th July, 1896, defendant

Court determining the amount of costs must be treated as a continuation or completion of the judgment, and the amendment made was therefore substantially made on review of judgment, and Art. 179 (3) of Sch. II to the Limitation Act applied. **VENKATA JOGATTA v. VENKATASINHADEI JAGAPATIRAZU** (1900) I. L. R., 24 Mad., 25

5.—Omission in judgment—Civil Procedure Code (Act XIV of 1932), ss. 206, 622—Omission in judgment—Decree in conformity with judgment—Amendment of decree under s. 206—Remedy by appeal—Inadmissibility of revision petition—Limitation Act (XV of 1877), s. 5.—Defendants in a suit held certain land on lease from plaintiff, who alleged that they had encroached upon his land and by that means held more than the area to which they were entitled. He sued for possession of the excess, and also claimed arrears of rent. Defendants denied the alleged encroachment, and pleaded that if it should be proved they were willing to pay increased rent. They also admitted liability in respect of the arrears of rent. The encroachment was proved, and the District Munsif gave judgment declaring defendants liable for increased rent in proportion, a decree being drawn up in similar terms. Both judgment and decree omitted to award the amount admittedly due as arrears of rent. Plaintiff thereupon presented a petition to the District Munsif, who ordered the decree to be amended so as to render defendants liable for the said arrears. This order was passed more than one month from the date of the decree. Upon a petition being preferred by defendants in the High Court against the District Munsif's order of amendment: **Held that the petition was not admissible, inasmuch as it was open to the petitioner, under s. 5 of the Limitation Act, to appeal against the decree as amended, notwithstanding that a month had expired from the date of the decree **Nanda Rai v. Raghunandan Singh**, I. L. R., 7 All., 252, considered. **VISWANATHAN CHETTI v. RAMANATHAN CHETTI** (1901) I. L. R., 24 Mad., 646**

DECREE-HOLDER

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES
[I. L. R., 29 Calc., 546]

DECREE-HOLDER—concluded.**—breach of contract by—**

See DECREE—CONSTRUCTION OF DECREE
—CONSENT DECREE

[I. L. R., 28 Calc., 557

—minor—

See LIMITATION ACT, 1877.

[I. L. R., 28 Calc., 485

DEED

	Col.
1. EXECUTION	313
2. ATTESTATION	314
3. CONSTRUCTION	315

See DOCUMENT

—attestation of—

See EVIDENCE ACT, s 68

[6 C. W. N., 395

—construction of—

See COMPROMISE—CONSTRUCTION,
ENFORCING, EFFECT OF, AND SETTING
ASIDE, DEEDS OF COMPROMISE.

See GRANT—CONSTRUCTION OF GRANTS

See LEASE—CONSTRUCTION.

See MORTGAGE—POSSESSION UNDER
MORTGAGE . I. L. R., 25 All., 287

—execution of—

See HUSBAND AND WIFE

[6 C. W. N., 809

See PARDANASHIN WOMEN.

[I. L. R., 28 Calc., 546

—of assignment—

See DEBTOR AND CREDITOR.

[I. L. R., 28 Bom., 577

—of sale—

See EVIDENCE—PAROL EVIDENCE—VARY-
ING OR CONTRADICTING WRITTEN
INSTRUMENTS

—registration of—

See REGISTRATION ACT (III OF 1877)

—suit to set aside—

See DECLARATORY DECREE, SUIT FOR—
SUITS CONCERNING DOCUMENTS.

1 EXECUTION.

1.—Proof of execution—Evidence Act (I of 1872), s 68—Transfer of Property Act (IV of 1882), s 59—Attesting witness—Mortgage—Writer of the deed—A person who is present and witnesses

DEED—continued.**1. EXECUTION—concluded.**

—Admission of signature before Registrar—

2.—Signature—Execution of deed—Registra-
tion—Admission of signature before Registrar—

mortgage bond for Rs21,750 on account of funds
executed by me is correct," it shows that he gave
that is
valid

[I. L. R., 28 Calc., 329

2 ATTESTATION

3.—Sufficiency of attestation—Transfer of
Property Act (IV of 1882), s 59—Attestation of
mortgage bond—Meaning of the word "attested"—
Attestation in the presence of the mortgagor after
having received from him a personal acknowledgment.

merely on the mortgagor's admission of his

attested witness and that the witnesses have signed it in the presence of the mortgagor

[I. L. R., 27 Bom., 91

4.—Time of attestation—Evidence Act (I of 1872), s 70, 114—Transfer of Property Act (IV of 1882), s 59—Mortgage-deed, proof of—Attesting witness—Where a mortgage-deed, on the face of it, showed that it was attested by two witnesses, one of whom was the writer, whose denial of execution of the deed by the mortgagor had been found by the Court of Appeal below to be false, and the other witness said that the mortgagor signed in his presence but he was not able to remember whether the mort.

DEED—concluded.**2. ATTESTATION—concluded.**

gages signed also in the presence of the writer, and it appeared that the writer's signature preceded that of the other witness: *Held* that, under the circum-

NITAI CHURN BUNDOPADHYA (1903)

[7 C. W. N., 384

5.—Witness writing name of executant—*Transfer of Property Act (IV of 1882), s. 59—Mortgage-bond, proof of—Witness writing the name of executant, whether an attesting witness—Practice—Remand.*—Where a lady executed a mortgage-deed by putting her finger-mark to the same, and a person who saw her put the finger-mark wrote her name at her request and the words "by the pen of" preceding his name written by himself: *Held* that he was an attesting witness, and the words "by the

that at least two of the persons whose names appeared on the face of the document were attesting witnesses.

DINAMOYEE DEBI v. BON BEHARI KAPUR (1902)

[7 C. W. N., 180

3. CONSTRUCTION.**6.—Absence of reservation—Deeds of mort-**

or reservation, and are otherwise apt for the purpose, they convey all the interest in the zamindars which was possessed by the former owners, including profit rentals of bazars built on lands not shown to have been severed therefrom ASHGAB REZA KHAN v. MAHMOUD VEHHI HOSSEIN KHAN (1903)

[L. R., 30 I. A., 71: s.c. 7 C. W. N., 482;

I. L. R., 30 Calc., 558

DEFAMATION.

See ABATEMENT OF SUIT—APPEALS

[I. L. R., 26 Bom., 597

See JURISDICTION OF CIVIL COURT—CASTE . . . I. L. R., 26 Bom., 174

See LIBEL.

See PRIVILEGED COMMUNICATION.

[7 C. W. N., 248

See SLANDER.

DEFAMATION—continued.

—suit for—

See SECRETARY OF STATE.

[I. L. R., 27 Bom., 109

1.—Answers to Police officer—*Damages—Action for damage—Investigation—Police officer—Witnesses—Privilege.*—No action for damages lies against a person for what he states in answer to

[I. L. R., 28 Calc., 794: s.c. 5 C. W. N., 804

2.—Charge—*Publication—Malice, omission to apologise no proof of—Penal Code (Act XLV of 1860), ss. 499 and 500—Criminal Procedure Code (Act V of 1893), s. 222*—Where an accused person was convicted of defamation under s. 500 of the Penal Code, upon a charge which set out that the defamation was committed on or about the 12th day of April, and afterwards, by describing the

delivery of such a receipt was not a publication such as would render the accused liable to punishment for defamation, nor could the omission of the accused to apologise to the complainant subsequently, for the use of the caste designation, be taken as indicating that he used it at the time with a malicious intention BISHWANATH DAS v. KESAB GANDHRADANIK (1902)

[I. L. R., 30 Calc., 402: s.c. 7 C. W. N., 74

3.—*Imputation on a wife—Criminal Procedure Code (Act V of 1893), s. 4 (h), Chap. XV, Part B, ss. 191, 195, 196, 198, 199, and s. 345—Penal Code (Act XLV of 1860), s. 499, Expt. I—Defamation of wife—Complaint by husband—Aggrieved party—Held by the Full Bench (RANADE, J., dissenting) that, under the provisions of the*

I. L. R., 40 Bom., 100

4.—Municipal officers—*Indian Penal Code (Act XLV of 1860), s. 500—Criminal Procedure Code (Act V of 1893), s. 222*

poses of the point of law to be determined, were assumed to be defamatory. These related to the conduct of certain subordinate officers of the Madras

DEFAMATION—concluded.

Municipal Commission. A complaint was lodged by

person aggrieved within two months, viz. of
of the Code of Criminal Procedure **BEAUCHAMP**
v. MOORE (1902) I. L. R., 26 Mad., 43

an intent that the person who makes or publishes any

6.—Statement in pleadings—**Penal Code**
(Act XLV of 1860), ss 499, 500—Statement made
in a plaint—Pleadings, statement of parties in,
whether privileged—Parties and witnesses, distinction
between statements made by—Statements

BAHU (1900) b C. W. N., 2293

7.—True statement—**Penal Code** (Act XLV
of 1860), ss 499, 500—True statement that
had been convicted of theft and sent to

DEFENDANT.

See **PARTIES—SUBSTITUTION OF PARTIES**
—DEFENDANTS.

DEFENDANT—concluded.

See **PRACTICE—CIVIL CASES—OPENING**
CASE FOR DEFENDANT.

See **RES JUDICATA—PARTIES—CO-DEFEN-**
DANTS.

—death of—

See **ABATEMENT OF SUIT.**

[I. L. R., 25 All., 206]

See **CIVIL PROCEDURE CODE**, s 103.

[I. L. R., 29 Cal., 33]

See **MALICIOUS PROSECUTION**

[I. L. R., 26 Mad., 499]

See **PARTIES—SUBSTITUTION OF PARTIES**
—DEFENDANTS.

DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).

—s. 3—

—Land-revenue—Suit for land-revenue not a
suit for rent—A suit for land-revenue does not fall
under s. 3 of the Dekkhan Agriculturists' Relief Act
(XVII of 1879) The liability for land-revenue does
not spring from a contractual engagement, and a
claim in respect thereof is not one for rent or
damages within the meaning of cl. (s) of s. 3 of the
Act. **GULAM JILANI v. KASHINATH BAPUJI DANI**
(1900) I. L. R., 25 Bom., 244

—ss. 3, 15A—

See **MORTGAGE—CONSTRUCTION.**

[I. L. R., 26 Bom., 252]

—s. 22—

behalf of the defendants that the covenant to pay the
produce did not amount to a "specific mortgage" of
the land, and that consequently the sale to the
plaintiff was invalid under s. 22 of the Dekkhan
Agriculturists' Relief Act (XVII of 1879). *Held*
that the land was specifically mortgaged for the
repayment of the debt, and that the sale was valid
and the plaintiff was entitled to recover possession.
BALSHET v. DHOND RAMKISHNA (1901)

[I. L. R., 26 Bom., 3]

DELAY.

See ARBITRATION—AWARDS—DELAY IN MAKING AWARD.

[I. L. R., 26 Bom., 132]

See PRACTICE—CIVIL CASES—SECURITY FOR COSTS . . . 5 C. W. N., 119

See SPECIFIC PERFORMANCE—GENERALLY.
[I. L. R., 30 Calc., 265]

—in presenting appeal—

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—MISCELLANEOUS CASES . . . L. R., 30 I. A., 20

See MADRAS RENT RECOVERY ACT, s. 69.
[I. L. R., 24 Mad., 558]

—prevention of—

See CRIMINAL PROCEEDINGS
[I. L. R., 26 Bom., 552]

DELEGATION OF AUTHORITY, POWERS OR FUNCTIONS.

See ARBITRATION—DUTIES AND POWERS OF ARBITRATORS

[L. R., 29 I. A., 168]

See LEGAL PRACTITIONERS ACT, 1879, s. 36 . . . 8 C. W. N., 289

See SECURITY FOR GOOD BEHAVIOUR
[I. L. R., 25 All., 272]

DENIAL OF TITLE.

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE.

See TITLE, DENIAL OF.

DEPOSIT.

—in Court, of debt—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES

[I. L. R., 30 Calc., 425]

See TRANSFER OF PROPERTY ACT, s. 83
[I. L. R., 25 All., 179]

—of Government Securities—

See LIMITATION ACT, 1877, SCH. II, ART 145 . . . 7 C. W. N., 478

—of money—

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

[I. L. R., 30 Calc., 262]

—of mortgage money—

See MORTGAGE—REDEMPTION—MISCELLANEOUS CASES I. L. R., 27 Bom., 23

—of rent—

See BENGAL TENANCY ACT, SCH. III, ART 2 (a) . . . I. L. R., 29 Calc., 283

DEPOSIT—concluded

—to stay sale—

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

DEPOSITARY.

See LIMITATION ACT, 1877, SCH. II, ARTS. 48, 49 AND 145

[I. L. R., 26 Bom., 430]

DEPOSITION.

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS.

DEPUTY COMMISSIONER.

—Magistrate to act as Deputy Commissioner in Sessions . . . Procedure C . . .

conferring special powers on District Magistrates—Jurisdiction.—A Magistrate of the first class who is holding an inquiry in a case of dacoity has jurisdiction either to commit the accused to the Court of Session or to discharge him. He has no authority to make over the case to a District Magistrate who is a Deputy Commissioner specially empowered under s. 30, Code of Criminal Procedure, to try such cases. But where it was found that an accused person who had been convicted by the District Magistrate in a case thus made over to him had not been prejudiced at the trial, the High Court maintained the conviction. AMIR KHAN v. KING-EMPEROR (1902) . . . 7 C. W. N., 457

DEPUTY MAGISTRATE.

See APPEAL IN CRIMINAL CASE—ACQUIT-TALS, APPEALS FROM

[I. L. R., 26 Mad., 478]

DESIGN.

See INVENTIONS AND DESIGNS ACT, s. 51.
[I. L. R., 25 All., 493]

DESTRUCTION.

—of articles unfit for human food—

See CALCUTTA MUNICIPAL ACT (BEN ACT III of 1899), ss. 502, 505

[I. L. R., 30 Calc., 421]

DETENTION OF ACCUSED BY POLICE.

—Detention in police-custody by order of Magistrate—Sufficient reasons, recording of—Criminal Procedure Code (Act V of 1938).

detention that the accused was wanted by the Police

DETENTION OF ACCUSED BY POLICE—concluded.**DILUVION.***See* LIMITATION ACT, 1877.

[I. L. R., 29 Calc., 518]

DIRECTORS.*See* COMPANY—WINDING UP—LIABILITY OF DIRECTORS AND OFFICERS.

[I. L. R., 29 Calc., 688]

DISABILITY.*See* LIMITATION ACT, 1877, s. 7.

[5 C. W. N., 545]

DISCHARGE OF ACCUSED.*See* COMPENSATION—CRIMINAL CASES—TO ACCUSED, ON DISMISSAL OF COMPLAINT.*See* COMPLAINT—DISMISSAL OF COMPLAINT*See* CRIMINAL PROCEEDINGS.

[I. L. R., 28 Calc., 104]

See REVISION, CRIMINAL CASES—DISCHARGE OF ACCUSED.*See* WITNESS—CRIMINAL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES

[I. L. R., 25 Bom., 422]

—improper discharge—*See* CRIMINAL PROCEDURE CODE, s. 436

[5 C. W. N., 574]

—re-opening of proceedings after—*See* CRIMINAL PROCEDURE CODE, s. 437.

[8 C. W. N., 163]

under s. 437 of the Criminal Procedure Code "sufficient ground for committing" do not mean sufficient ground for convicting, but refer to a case in which the evidence is sufficient to put the accused on his trial, and such a case arises when credible witnesses—

accuses a wrong assertion as he takes upon himself to discharge an accused in the face of evidence

DISCHARGE OF ACCUSED—continued.which might justify a conviction. *EMPEROR v. VARJIVANDAS* (1902) . I. L. R., 27 Bom., 84**2—Revival of proceedings—Presidency Magistrate—***Wheth*
by the

Presidency Magistrate is competent to re-hear a warrant-case triable under Ch. XXI of the Code of Criminal Procedure, in which he has discharged the accused person. *Held* by GHOSH, J.—Where a Presidency Magistrate, by reason of the absence of the complainant, and without pronouncing any opinion as to the guilt or innocence of the accused, strikes off the case, his order is not a judg-

[1895], 1 C. W. N., 49, approved in *MAHARAJA NAIK MONDUL v. BENI MADHAB KANETTER* (1901)

[I. L. R., 28 Calc., 662; s.c. 5 C. W. N., 457]

3. Criminal Procedure Code (Act V of 1898), ss. 209, 436—Refusal by Magistrate to charge accused with offence triable exclusively by Court of Session—"Discharge"—**Charge of offence triable by Magistrate—Acquittal—****Order by Sessions Court for further inquiry and**

a further charge to be framed under s. 441 of the

4. Warrant-case—Process, re-issue of, against accused in respect of the same offences—Magistrate, Provincial or Mofassil,

DISCHARGE OF ACCUSED—continued.

powers of—Whether order for further inquiry necessary before re-issue of process—Judgment—

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..... **W. N., 633**

5. *Criminal Procedure Code (Act V of 1898), s. 435 (4)—Refusal by Sessions Judge to commit for trial—Subsequent commitment by District Magistrate, after taking up the case *suo motu*—Legality.—A second-class*

.....

.....

District Magistrate took up the case *suo motu*, and directed the commitment of the accused for trial at the Sessions Court on a charge of murder. On reference being made to the High Court for orders:

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.....

section was to avoid a conflict between the orders of two District authorities having co-ordinate powers, and that reason applied equally to cases in which the authorities acted *suo motu* **KALIMUNG & EMPEROR (1902)** . . . **I. L. R., 26 Mad., 477**

6. *Case revised by Chief Presidency Magistrate and transferred for trial to Honorary Bench*

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DISCHARGE OF ACCUSED—concluded.

Bench for hearing. Held that the Honorary Bench had jurisdiction to entertain such application

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DISCOVERY.

See **NEW TRIAL** . . . **6 C. W. N., 809**

See **PRACTICE—CIVIL CASES—INSPECTION AND PRODUCTION OF DOCUMENTS.**

[**I. L. R., 28 Calc., 424**

See **SECRETARY OF STATE**
[**I. L. R., 27 Bom., 189**

DISCRETION OF COURT.

See **CHARGE—ALTERATION OR AMENDMENT OF CHARGE** . . . **11 C. W. N., 72**

See **CO-SHARERS—ENJOYMENT OF JOINT PROPERTY—ERUCTION OF BUILDINGS**

[**I. L. R., 30 Calc., 901**

See **COSTS—APPEAL** . . . **7 C. W. N., 647**

See **EXECUTION OF DECREE—STAY OF EXECUTION** . . . **5 C. W. N., 718**

See **FALSE CHARGE** . . . **5 C. W. N., 106**

See **INJUNCTION—**

UNDER CIVIL PROCEDURE CODE ;
[**I. L. R., 26 Mad., 168**

SPECIAL CASES—POSSESSION OF JOINT PROPERTY.

[**I. L. R., 29 Calc., 500**

See **INTEREST.**

See **SANCTION FOR PROSECUTION—DISCRETION IN GRANTING SANCTION**

See **SPECIAL OR SECOND APPEAL—**

ORDERS SUBJECT OR NOT TO APPEAL ;
[**I. L. R., 25 All., 71**

GROUND OFS OF APPEAL—EVIDENCE, MODE OF DEALING WITH ;

[**I. L. R., 23 All., 121**

OTHER ERRORS OF LAW OR PROCEDURE—DISCRETION, EXERCISE OF,

See **WITNESS—CIVIL CASES.**

[**I. L. R., 28 Calc., 37**

See **WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.**

[**I. L. R., 30 Calc., 608**

DISHONOUR, NOTICE OF.

See **HUNDI—NOTICE OF DISHONOUR**

See **NEGOTIABLE INSTRUMENTS ACT, s. 93.**
[**I. L. R., 26 Mad., 239**

DISMISSAL OF APPEAL.

See **APPEAL—DEFAULT IN APPEARANCE.**

DISMISSAL OF COMPLAINT.

See COMPENSATION—CRIMINAL CASES—
TO ACCUSED, ON DISMISSAL OF COM-
PLAINT

See COMPLAINT—DISMISSAL OF COMPLAINT.

DISMISSAL OF SUIT.

See CIVIL PROCEDURE CODE, s. 153.
[I. L. R., 23 All., 462]

—for default in appearance—

See CIVIL PROCEDURE CODE—
s. 99;
ss. 103 AND 104.

—A declaration affecting the plaintiff in a suit which
is dismissed is not legal. CHHOTU MANTON v
SHYAMJI KOER (1901). . . 5 C. W. N., 445

DISPOSSESSION.

See BENGAL TENANCY ACT, SEC. III, ART. 3

See CONTRIBUTION, SUIT FOR—
CO-SHARERS, LIABILITY OF;
[6 C. W. N., 803]

JOINT WRONG-DOERS;
[6 C. W. N., 88]

See CRIMINAL PROCEDURE CODE, s. 522.
[5 C. W. N., 250]

See LANDLORD AND TENANT—LIABILITY
FOR RENT . . . 5 C. W. N., 853

See LIMITATION ACT, 1877, SEC. II, ART.
163 . . . I. L. R., 25 All., 343

See POSSESSION—SUITS FOR POSSESSION

See POSSESSION, ORDER OF CRIMINAL
COURT AS TO—DISPOSSESSION BY CRIMI-
NAL FORCE

—by co-shebat—

See HINDU LAW—ENDOWMENT—DEALING
WITH, AND MANAGEMENT OF, ENDOW-
MENT . . . 5 C. W. N., 273

—in execution of decree—

See RESISTANCE OR OBSTRUCTION TO
EXECUTION OF DECREE

DISQUALIFICATION.

—of Magistrate—

See MAGISTRATE—GENERAL JURISDICTION . . . I. L. R., 24 Mad., 233

—to inherit—

See HINDU LAW—

INHERITANCE—DIVESTING OF, OR
EXCLUSION FROM, AND FORFEITURE
OF, INHERITANCE;

WIDOW—DISQUALIFICATIONS.

DISTRRAINT OR DISTRESS.

See BENGAL TENANCY ACT, ss. 121, 122
AND 140 . . . I. L. R., 28 Calc., 364

See MADRAS RENT RECOVERY ACT, ss.
15, 17 AND 18.
[I. L. R., 25 Mad., 503]

See N-W. P. RENT ACT, s. 56.
[I. L. R., 24 All., 127]

See PENAL CODE, s. 186.
[I. L. R., 30 Calc., 285]

—no presumption of legality of—

See PENAL CODE, s. 424.
[I. L. R., 25 Mad., 729]

—wrongful—

See WRONGFUL DISTRRAINT

DISTRIBUTION OF SALE-PROCEEDS.

See MORTGAGE—SALE OF MORTGAGED
PROPERTY—RIGHTS OF MORTGAGORS;
[I. L. R., 29 Calc., 803]

See SALE IN EXECUTION OF DECREE—
DISTRIBUTION OF SALE-PROCEEDS

DISTRICT COURT.

See CONTEMPT OF COURT—CONTEMPT
GENERALLY . . . I. L. R., 26 Mad., 494

—appeal to—

See APPEAL—ORDERS—ORDER REFUSING
APPLICATION TO BE DECLARED INSOL-
VENT . . . I. L. R., 27 Bom., 804

DISTRICT JUDGE, JURISDICTION OF.

See TRANSFER OF CIVIL CASE—GENERAL
CASES . . . I. L. R., 24 All., 304, 356
25 All., 183

—Civil Procedure Code (Act XIV of 1852)
as 25, 191 (2)—Suit commenced in a District Court
—Issues settled by District Judge—Case trans-
ferred to Sub-Court by High Court—Decision by
Sub-Judge—Appeal to, and decision of, District
Judge—Validity of decision on appeal and of
transfer by High Court—A suit was instituted in
a District Court, and issues were settled by the
District Judge. The suit was then transferred by
the High Court to the Court of the Subordinate
Judge, who decided the case. An appeal was then
preferred to and was heard by the District Court,
though the Judge who heard the appeal was not the
Judge who had settled the issues. On a second
appeal being preferred to the High Court: Held (1)
that the District Court had jurisdiction to hear the
appeal, s. 17 of the Madras Civil Courts Act
(III of 1873) having no application; (2) that the
High Court had jurisdiction, under ss. 25 and
191 (2) of the Code of Civil Procedure, to make the
transfer to the Subordinate Judge, although the case

DISTRICT JUDGE, JURISDICTION OF
—concluded.

was in part heard. **PALANISAMI COWDAN v. THONDAMA COWDAN** (1902)

[I. L. R., 26 Mad., 595]

DISTRICT MAGISTRATE.

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES—DUTY OF MAGISTRATE.

[6 C. W. N., 843]

See MAGISTRATE—

GENERAL JURISDICTION;

[I. L. R., 30 Calc., 449]

POWERS OF MAGISTRATES.

[I. L. R., 29 Calc., 242]

See REVISION—CRIMINAL CASES—ACQUIT-TALS . . . 7 C. W. N., 493

—powers of—

See SECURITY FOR GOOD BEHAVIOUR

[I. L. R., 29 Calc., 455]

DIVESTING OF PROPERTY.

See HINDU LAW—

ADOPTION—EFFECT OF ADOPTION;

INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE.

WIDOW—DISQUALIFICATIONS

DIVORCE.

See DIVORCE ACT.

See MAHOMEDAN LAW—DIVORCE

DIVORCE ACT (IV OF 1869).

1.—Costs—Divorce—Wife's costs—Dismissal of wife's petition—Liability of husband—Deposit or security for costs—In a divorce suit, where it is shown that the wife has no money of her own, the mere fact that no deposit has been made or security given for payment of the wife's costs is no obstacle
a husband to
is dismissed.
6 P. D., 119.
D., 141; and
5 Calc., 357,

W. N., 565

DIVORCE ACT (IV OF 1869)—continued.

On an application by the wife for her costs during the pendency of her suit for judicial separation and her husband's suit for divorce: *Held* that a wife, whose property is retained by her husband, is entitled to her costs. Also that, inasmuch as the parties are domiciled abroad, and the law of that country is not before the Court, s 7 of the Divorce Act applies, and the Court will act on the general principles of English law. *Maghew v. Maghew* (1895), I. L. R., 19 Bom., 293, followed. *GEORGUCOPULAS v. GEORGUCOPULAS* (1902) . I. L. R., 29 Calc., 619

—ss. 7, 11 and 45—Divorce—Parties—Inter-vention—Jurisdiction—Alleged adultery, appli-cation by—Civil Procedure Code (Act XIV of 1882), s 32.—In a wife's suit for divorce against the husband on the ground of alleged adultery the

the Act does not apply to procedure S 32 of the Civil Procedure Code (Act XIV of 1882) cannot apply to the case of substitution, dismissal or addition of parties in divorce proceedings *Bell v. Bell* (1883), L. R., 8 P. D., 217, *Abbot v. Abbot* (1909), 4 B. L. R. (O.C.), 61, and *Lowe v. Lowe* (1899), P. D., 204, referred to *RAMSAY v. BOYLE* (1903) . I. L. R., 30 Calc., 489

—Matrimonial Causes Act (20 & 21 Vict., c. 63), s 23—Civil Procedure Code (Act XIV of 1882), s 32—Suit for dissolution of marriage—Wife's petition—Husband's incestuous adultery—If alleged adultery can intervene—High Court's jurisdiction—In a wife's petition for

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—s. 35—Divorce—Condonation—Re-trial—Cor-respondent—Costs—Evidence of misconduct on a date after suit—Where a husband has condoned adul-

—s. 36—Divorce—Security for wife's costs—Absence of means of wife—Alimony pendente lite—Reference to Registrar.—In a suit for divorce between persons subject to the Indian Succession Act,

—s. 7—Husband and wife—Wife's costs, appli-cation for—Foreign domicile—Property of wife—

DIVORCE ACT (IV OF 1869)—concluded.

the mere fact that the wife has no means of her own is not such a special circumstance as will justify the

—s. 45—

See ante, ss. 7, 11, and 45

See COSTS—SPECIAL CASES—DIVORCE.

[I. L. R., 28 Calc., 84

DOCUMENT

See DEED.

See PARDANASHIN WOMEN—EXECUTION OF DOCUMENT BY.

[I. L. R., 29 Calc., 749

See PRACTICE—CIVIL CASES—INSPECTION AND PRODUCTION OF DOCUMENTS.

See RECITALS IN DOCUMENTS

—alteration of—

See CONTRACT—ALTERATION OF CONTRACTS

See LIMITATION ACT, 1877, s. 19—ACKNOWLEDGMENT OF DEBTS

[I. L. R., 28 Bom., 128

—construction of—

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . I. L. R., 25 All., 337

See GIFT . I. L. R., 23 All., 309

—construction of Wajib-ul-uraz—

See HINDU LAW—WILL—CONSTRUCTION OF WILL—ADOPTION.

[I. L. R., 24 All., 195

See PRE-EMPTION—CONSTRUCTION OF WAJIB-UL-URAZ

—explanation of, to pardanashin women—

See PARDANASHIN WOMEN

[I. L. R., 28 Calc., 548

—suit for cancellation of—

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS

—thirty years or more old—

See EVIDENCE ACT (I of 1872), s. 90

1.—Alteration of—Material alteration—Material alteration in a written acknowledgment of a debt does not render it inoperative and

DOCUMENT—concluded.

ineffective—Limitation.—The rule of English law that a material alteration of a document by a party to it after its execution, without the consent of the other party, renders it void, is in force in India.

2.—Execution of—Signature sufficient of

to be set aside—Fraud.—A document is a nullity, where the executant of it signed only on the first page but did not sign on the other pages, having discovered that it was not in accordance with the terms previously agreed upon; such a document

see, *Omka Lal Misra v. Amarendra Nath Misra* (1895), I. L. R., 23 Calc., 460; and *Baghbar Dyal Sahu v. Bhatya Lal Misser* (1895), I. L. R., 12 Calc., 69, referred to. A suit to recover possession of immovable property by setting aside a document on the ground of fraud, but which document does not require to be set aside or cancelled, is governed by Art 142 and not by Art 91, Sch II, of the Limitation Act (XV of 1877) *BANKU BEHARI SHARMA v. KRISHNA GOBINDO JOARDAR* (1902)

[I. L. R., 30 Calc., 433

DOCUMENTARY EVIDENCE.

See EVIDENCE—

CIVIL CASES;

CRIMINAL CASES

DOMICILE.

See FOREIGN COURT, JUDGMENT OF.

[I. L. R., 29 Calc., 509

See HINDU LAW—WIDOW—INTEREST IN ESTATE OF HUSBAND—BY INHERITANCE . I. L. R., 24 Mad., 650

—foreign—

See DIVORCE ACT (IV OF 1869), s. 7.

[I. L. R., 29 Calc., 619

DOWER.

See MAHOMEDAN LAW—DOWER.

DRUGS.

See BOMBAY ANKARI ACT (BOM ACT V OF 1873), ss. 3 (9) AND 62

[I. L. R., 27 Bom., 551

DUTIES.**—liability of Government to—**

See MADRAS CITY MUNICIPAL ACT, s. 341.
[I. L. R., 25 Mad., 457]

DWELLING-HOUSE.

See REGISTRAR OF HIGH COURT—SALE
BY REGISTRAR . 5 C. W. N., 593

DYING DECLARATION.

See EVIDENCE—CRIMINAL CASES—DYING
DECLARATION.

E**EASEMENT.**

See INJUNCTION—SPECIAL CASES—OB-
STRUCTION OR INJURY TO RIGHTS OF
PROPERTY.

See PRESCRIPTION—EASEMENTS

See RIGHT OF WAY

See RIGHT TO USE OF WATER

—dispute concerning—

See POSSESSION, ORDER OF CRIMINAL
COURT AS TO—DISPUTES AS TO RIGHT
OF WAY, WATER, ETC.

1.—Evidence—Order unsupported by evidence
—Criminal Procedure Code (Act V of 1898),
s. 147.—In proceedings under s. 147 of the Criminal
Procedure Code, the first party filed their written
statement, and the Magistrate, having declined to
give the second party time to file their written
statement, made an order under that section in
favour of the first party, without recording any
evidence. Held that the Magistrate ought to have
had some evidence in proof of the allegations con-
tained in the written statement; and that, there

2.—Tenant—Easement, right of—Whether a
tenant having permanent interest on the land could
acquire such right in other land of his lessor—
Osai taluqdar.—A tenant of land, even if having a
permanent right of tenancy on the land, cannot

3.—Water—Easements Act (V of 1892),
s. 7, 17.—Right to raise crest level of calingula
of tank—Submersion of lands thereby—Right of
owner of such lands to protect them from sub-

EASEMENT—continued.

mergence.—The defendants, being the holders of
land situated below a tank, had, for a period of over
twenty years, by means of a dam, raised the calingula
of the tank higher than its crest level. The effect
had been to collect an increased quantity of water

defendants on the calingula should be removed so
that water should be stored in the tank only to the
height of the crest level of the calingula: Held
that the defendants had not exceeded the right which
they had been proved to have acquired. *Semile*
that, notwithstanding that right, plaintiffs were
entitled to take measures to save their lands from
being submerged *NARAYANA REDDI v. VENKATA*
CHARIAR (1900) . I. L. R., 24 Mad., 203

4.—Easements Act (V of 1892),
s. 13.—Purchase of land by Government at sale
for arrears of revenue—Right of irrigation by
way of easement—Assessment of raygats in occu-
pation.—In 1846, certain villages, forming part of
a zamindari, were brought to sale by Government

The zamindar had himself occupied the wet lands

authority of Government. In 1854, the Board of
Revenue directed that no portion of the assessment
should be credited to the zamindar, who now sued
for a declaration of his right, and for the amount
since collected. Held that the melvaram right in
the villages passed, by the sale, to the Government,
who were entitled by easement, to have the lands
irrigated from the then existing source of irrigation,
and to levy wet assessment on them. Also that the
action of the Settlement Department in assessing the
consolidated wet rate was right, and that plaintiff

FOR INDIA IN COUNCIL (1902)

[I. L. R., 26 Mad., 51]

5.—Easements Act (V of 1892),
s. 13 (c).—Grant of outlays as inam—Right to
water for irrigation—Area under wet cultiva-
tion at time of grant subsequently increased—
Claim by inamdar for proportionate increase
of water for irrigation.—In 1859 a village

EASEMENT—concluded.

with land comprising 339 acres was granted by Government, as *inam*, to plaintiff. At the time of the grant, 106.09 acres were under wet cultivation, the remainder being *poramboke*, prior minor *inams* and land under dry cultivation. The area of land under wet cultivation was subsequently increased, and plaintiff claimed to be entitled to water for the irrigation of this increased area without paying assessment thereon, and, in 1870, the Collector of the district permitted that increase. Plaintiff had now been assessed in respect of the increased area, and brought this suit for a declaration of his right and for a refund of the money paid by him under protest. *Held* that plaintiff was entitled, under s. 111 (c) of the Easements Act, to irrigate 106.09 acres, and no more. *Also* that the action of the Collector in 1870 was unauthorised and had not been subsequently ratified by Government, and was not binding on Government. **CHIDAMBARA RAO v SECRETARY OF STATE FOR INDIA IN COUNCIL** (1902) I. L. R., 28 Mad., 66

8. — — — Customary right—Use of water and water-course—Kiparian rights—Irrigation—Continuous use—Interruption—Unreasonable rights—Nuisance—An easement which is not a customary right need not be reasonable. An easement may be established of the right to cause river-water to flow across the servient tenement on to the dominant tenement for the purpose of irrigation, by means of embankments erected on the dominant tenement. In establishing such easement, it is immaterial whether the exercise of the right is continuous, provided it has been exercised for the statutory period, during seasons of drought, when it could be taken advantage of. *Cooper v Barber* (1810), 5 Taunt., 99, *Whalley v. Lancashire and Yorkshire Railway Company* (1894), L. R., 13 Q. B. D., 131, and *Rylands v. Fletcher* (1868), 3 H. L., 330, distinguished. *Hollins v. Verney* (1834), L. R., 13 Q. B. D., 304, doubted. **BENBU NANDAL v MALIAT NANDAL** (1903)

[I. L. R., 30 Calc., 1077]

EASEMENTS ACT (V OF 1882).

See PRESCRIPTION—EASEMENTS

—ss. 7 and 17—

See EASEMENT. I. L. R., 24 Mad., 202

—s. 13—

See EASEMENT.

[I. L. R., 26 Mad., 51, 66]

—s. 23—

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR. I. L. R., 26 Bom., 374

EJECTMENT.

See LANDLORD AND TENANT—

NATURE OF TENANCY;

[5 C. W. N., 646]

EJECTMENT.

EJECTMENT—concluded.

See LIMITATION ACT, 1877, SCH. II, ART.

144—ADVERSE POSSESSION.

[I. L. R., 26 Bom., 442]

See MADRAS RENT RECOVERY ACT, s. 10

[I. L. R., 25 Mad., 613]

See MORTGAGE—CONSTRUCTION.

[L. R., 30 I. A., 54]

EJECTMENT, SUIT FOR.

See BENGAL TENANCY ACT, s. 155

[I. L. R., 30 Calc., 1083]

See COMPROMISE—

CONSTRUCTION, ETC., OF DEEDS OF COMPROMISE; 7 C. W. N., 158

COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE,

[7 C. W. N., 80]

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—NORTH-WESTERN PROVINCES. I. L. R., 23 All., 360

See LANDLORD AND TENANT—

NATURE OF TENANCY;

[I. L. R., 28 Calc., 738]

TRANSFER BY TENANT;

[8 C. W. N., 916]

FORFEITURE—DENIAL OF TITLE;

[I. L. R., 28 Calc., 135]

6 C. W. N., 575

EJECTMENT.

See ONUS OF PROOF—LANDLORD AND TENANT. 7 C. W. N., 734

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS

[I. L. R., 30 Calc., 339]

—notice—

See RULES MADE UNDER ACTS—BENGAL TENANCY ACT.

[I. L. R., 28 Calc., 580]

1.—Law of Oudh—Re-grant—Construction—Ambiguity—"Occupants"—In a suit to eject the

of Oudh, it appeared that, on a claim thereto made by the plaintiff, the Government had directed that the *bazar* be expunged from the *Natal Register*, and that the status of its "occupants," who were described as having all along exercised proprietary

Government was to re-grant to the persons who, but for the confiscation, would now be entitled. Until the re-grant, the property was that of

EJECTMENT, SUIT FOR—concluded.

the Government, and the defendants could not acquire title by limitation until twelve years thereafter. Case remanded to try (1) whether the plaintiffs would have been entitled but for the confiscation; and (2) whether the occupiers had acquired any rights by long possession. **CHOUHRI MAKBUL HUSAIN v. LALTA PERSHAD (1901)**

[L. R., 28 I. A., 169;
s.c. I. L. R., 24 All., 1

B.—Cause of action—Compensation—Transfer of Property Act (IV of 1902), s. 51—Ektoppel—Evidence Act (I of 1872), s. 115.—A brought a suit against B and others for ejectment, making the landlord a defendant to the suit, on the allegation

defendants (second party) mainly was that the suit was bad for multifariousness, inasmuch as they were severally in possession of definite and distinct portions of the land under different demises by the first defendant, and that there was no community of interest; that they, having taken leases from the first defendant in good faith and entered into possession of the land thereunder, spent a considerable amount of money in clearing jungles and making embankments, etc., and that, if the plaintiff be entitled to succeed at all, he could not obtain possession without paying them compensation. *Held* that the suit was not bad for misjoinder of causes of action. The cause of action of a plaintiff suing in ejectment cannot be affected by the title under which the defendants profess to hold possession, for what concerns the plaintiff is that another is wrongfully in possession of what belongs to him; and that fact gives him his cause of action, and it is a matter of indifference to him on what ground different persons in possession may seek to justify the wrongful detention of what is his. What the plaintiff is entitled to claim is the recovery of possession of his

Hasra v. Rameswar Mondol (1897), I L. R., 24 Calc., 631, referred to. *Held also* that, as it was

proceed with these expenditures, the plaintiff was

possession against the defendants. **NUDDO RUMAB NASKER v. BANOMALI GATAN (1902)**

[I. L. R., 29 Calc., 871

EMBANKMENT.

1.—Addition to embankment—“Shall add to”—Bengal Embankment Act (Ben. Act II of 1882), ss. 76, cl. (a), 79—The words “shall add to any existing embankments,” in s. 76, cl. (a), of Bengal Act II of 1882, include an addition to the height of an embankment. **Goverdhan Sinha v. The Queen-Empress (1885), I. L. R., 11 Calc., 570, overruled. Asodhya Nath Koila v. Raj Krishno Bhaz (F.B., 1902)**

[I. L. R., 30 Calc., 481;
s.c. 7 C. W. N., 284

2.—Notification—Bengal Embankment Act (Ben. Act II of 1882), ss. 6, 76 (b), 80—Publication of notification in Gazette, effect of—

effect within a declared area one month after the notification mentioned in s. 6 appears in the Gazette. The further direction in s. 6 as to the publication of the notification in the manner provided by s. 80, as

override the declaration in s. 6 that the provisions of the notification shall take effect one month from the

3.—Sand bank—Bengal Embankment Act (Ben. Act II of 1882), ss. 3, 77—“Public embankment,” meaning of—“Made or erected”—Sand bank formed naturally between two spurs

cially formed, by the action of the water between two spurs erected by Government for the protection of an embankment, is not an embankment within the definition of that expression, nor is it a public embankment. The cutting through of such a sand bank for the protection of one's own cultivation by

EMBANKMENT—concluded.

construe strictly expressions occurring therein.
BISUMBRUR SINGH v. QUEEN-EMPRESS (1900)

[5 C. W. N., 108]

ENCROACHMENT.

See LAND REVENUE

[I. L. R., 35 Bom., 752]

—on public way—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE . . . 6 C. W. N., 886

ENDORSEMENT.

See RUDDI—ENDORSEMENT

See PROMISSORY NOTES—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES

—of warrant of arrest—

See WARRANT OF ARREST—CRIMINAL CASES . . . 5 C. W. N., 447

ENDOWMENT.

See ACT—1863—XX (RELIGIOUS ENDOWMENTS)

See DECLARATORY DECREE, SUIT FOR—ENDOWMENT

See HINDU LAW—ENDOWMENT

See LIMITATION ACT, 1877, SCH II—

ART 134;

[I. L. R., 27 Bom., 363, 500]

ARTS 134 AND 144

[I. L. R., 27 Bom., 373]

See MAHOMEDAN LAW—ENDOWMENT

See MALABAR LAW—ENDOWMENT

See REFERENCE TO HIGH COURT—CIVIL CASES . . . I. L. R., 25 Bom., 327

—Hindu Law—Mirasi rights attached to Detastanami—Suit against office-holder—Compromise consenting to sale of office and its emoluments

used by a person to whom he had mortgaged his right to the office, together with other property, and a compromise was arrived at, by the terms of which the office-holder agreed that his right to the office and to its emoluments should be sold in satisfaction of the mortgage-debt. A decree was passed in terms of the compromise, and the decree-holder sought to

ENDOWMENT—concluded.

have the right to the office sold in execution of that decree, and contended (on objection being raised) that, inasmuch as a decree had been passed directing the sale of the office, the Court executing the decree was not at liberty to consider its validity, but must execute it according to its terms. *Held* that, as the decree was based on an agreement of compromise, and the Court had merely adopted the contract, the Court must be taken to have adopted it with all its incidents. By s 375 of the Code of Civil Procedure, the Court had no jurisdiction to pass a decree on a compromise unless it was a lawful compromise.

will not be enforced. *Nagappa v. Venkata Rao, I. L. R., 24 Mad., 265*, referred to *LAKSHMANA-SWAMI NAIDU v. RANGAMMA (1902)*

[I. L. R., 26 Mad., 31]

ENGLISH LAW.

See LANDLORD AND TENANT—PAYMENT OF RENT—GENERALLY

[I. L. R., 26 Mad., 540]

—application of, in Calcutta—

See Slander . . . I. L. R., 26 Calc., 452

—Order 11 of 1883, Rule 1, sub-a. (c)—

See FOREIGN COURT, JUDGMENT OF

[I. L. R., 26 Calc., 641]

—By-law held to be unreasonable, and its enforcement refused—The English law as to the necessity of by-laws being reasonable is applicable to by-laws framed in the exercise of their statutory powers by Municipal Boards in India. KUPPERON v. BAL KISHAN (1902) . . . I. L. R., 24 All., 439

ENHANCEMENT OF RENT

See BENGAL TENANCY ACT, s. 20

See MADRAS RENT RECOVERY ACT, s. 11.

[I. L. R., 26 Mad., 456]

See RENT, SUIT FOR . . . 5 C. W. N., 890

—by arbitration—

See BENGAL TENANCY ACT, s. 30.

[8 C. W. N., 614]

—lands held in excess of tenure—

See BENGAL TENANCY ACT, s. 52.

[8 C. W. N., 318]

—onus of proof—

See EVIDENCE—CIVIL CASES—MISCEL.

LASTING DOCUMENTS—ROAD-CES,

PAPERS . . . I. L. R., 30 Calc., 1033

ENQUIRY.

See INQUIRY.

ENTICING AWAY MARRIED WOMAN.

See ADULTERY I. L. R., 30 Calc., 810
[7 C. W. N., 143]

EPIDEMIC DISEASES ACT (III OF 1897).

See SANCTION FOR PROSECUTION—WHERE
SANCTION IS NECESSARY, OR OTHERWISE.
[I. L. R., 34 Mad., 70]

EQUITY OF REDEMPTION.

See MORTGAGE.

See SALE IN EXECUTION OF DECREE—
MORTGAGED PROPERTY.

See TRANSFER OF PROPERTY ACT, s. 93.
[I. L. R., 30 Calc., 483]

ERROR.

See SALE IN EXECUTION OF DECREE—
ERRORS IN DESCRIPTION OF PROPERTY
SOLD

—affecting merits of case—

See APPELLATE COURT—ERRORS AFFECT-
ING OR NOT MERITS OF CASE.

See WITNESS—CIVIL CASES.
[I. L. R., 28 Calc., 37]

—in law—

See APPEAL—ARBITRATION.
[I. L. R., 29 Calc., 167]

See SPECIAL OR SECOND APPEAL—OTHER
ERRORS OF LAW AND PROCEDURE.

—Accused—Offence triable as a warrant case—
Conviction of offence triable as a summons case—
Absence of charge—Conviction, legality of—
Material error—Criminal Procedure Code (Act
V of 1898), ss. 232, 243 and 254—Penal Code (Act
XLV of 1860), ss. 143 and 379.—When a case is
being tried as a warrant case, and a charge is drawn
up of an offence which is triable as a warrant case,
and it is intended to proceed against the accused
also for an offence which is triable only as a summons
case, that offence should form part of the charge.
Where an accused person was summoned for offences
under ss. 143 and 379 of the Penal Code, and the
trying Magistrate drew up a charge only for the
offence under s. 379, but convicted the accused only
for the offence under s. 143 of the Code: Held that
the offence under s. 143 should have formed part of
the charge, and that the accused was misled in his
defence by the absence of such a charge. HOSSAIN
SARDAR v. KALU SARDAR (1902)
[I. L. R., 29 Calc., 461; s.c., 6 C. W. N., 599]

ESCAPE FROM CUSTODY.

1.—Aid of chankidar.—Power of a police-
officer to demand aid of a chankidar in arresting
an accused—Code of Criminal Procedure (Act
V of 1898), s. 42 (a)—Lawful arrest Lawful
custody.—A police-officer lawfully authorised to
arrest a person can demand the aid of a chankidar,
under s. 42 (a) of the Code of Criminal Procedure,
in preventing the person from escaping by a certain
path; and the custody of a person so taken by the
chankidar is, for the time being, lawful custody.
MANIK PATEL v. KENARAM SIBDAR (1901)
[8 C. W. N., 337]

2.—Arrest by private person—Act XLV
of 1860 (Indian Penal Code), ss. 224, 411—Escape
from lawful custody—Actual thief arrested by
private person whilst in possession of stolen
property—S. 411 of the Indian Penal Code not
applicable to the thief himself—S. 411 of the
Indian Penal Code does not apply to the person
who is the actual thief. When therefore a person

meaning of s. 411 of the Code demands that,
if the owner of the bullock had himself been entitled
to make the arrest, the subsequent custody of the
prisoner by the chankidar would have been a lawful
custody. QUEEN-EMPEROR v. POLADU (1898), I. L. R.,
11 Mad., 480, referred to KING-EMPEROR v. JOHNSTON
(1901) I. L. R., 28 All., 266

3.—Offence—Arrest—Cognizable offence—
Escape from lawful custody—"For any such
offence," meaning of—Code of Criminal Procedure
(Act V of 1898), s. 54—Penal Code (Act XLV of
1860), ss. 144 and 224.—The words, in s. 224 of the
Penal Code, "for any such offence" mean for any
offence with which a person is charged or for which
he has been convicted. So that it would be an offence
for a man to escape from custody after he had been
lawfully arrested on a charge of having committed
an offence, although he may not be convicted of such
latter offence. An accused person is no less guilty
than a convicted person, if he escapes from lawful
custody. In the present case the petitioners were
arrested by the police under the authority of s. 54
of the Code of Criminal Procedure. That arrest
was perfectly lawful, and the subsequent detention
was in lawful custody. GANGA CHARAN SINGH v.
QUEEN-EMPEROR (1893), I. L. R., 21 Calc., 337,
distinguished. DEO SHAM LAL v. QUEEN-EMPEROR
(1903)
[I. L. R., 28 Calc., 253; s.c., 5 C. W. N., 289]

ESCHEAT.

—As to whether natural relationship to an adopted
son would be efficacious to intercept an escheat to the
Crown, *quære*. MUTHAYYA RAJAGOPALA THEVAR
v. MINAKSHI SUNDARA NAIDU (1901)
[I. L. R., 25 Mad., 394]

ESTATES PARTITION ACT (BEN. ACT VIII OF 1876).

—ss. 116, 149, 150—

See LIMITATION ACT, 1877, SCH. II, ART. 14 . . . I. L. R., 29 Calc., 367

ESTOPPEL.

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| 1. ESTOPPEL BY JUDGMENT . . . | Col 341 |
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See AGREEMENT. I. L. R., 29 Calc., 306

See BANKER AND CUSTOMER.
[I. L. R., 25 Bom., 499]

See COMPANY—TRANSFER OF SHARES, AND RIGHTS OF TRANSFERERS
[I. L. R., 26 Bom., 54]

See COMPROMISE—CONSTRUCTION, ETC., OF DEEDS OF COMPROMISE
[7 C. W. N., 158]

See EJECTMENT, SUIT FOR
[I. L. R., 29 Calc., 871]

See LANDLORD AND TENANT—
NATURE OF TENANCY;
[I. L. R., 27 Bom., 515]

TRANSFER BY TENANT;
[8 C. W. N., 916]

FORFEITURE—DENIAL OF TITLE
[8 C. W. N., 575
7 C. W. N., 596]

See LAND REVENUE
[I. L. R., 26 Bom., 271]

See RES JUDICATA—ESTOPPEL BY JUDGMENT

—by conduct—

See COMPANY—TRANSFER OF SHARES, AND RIGHTS OF TRANSFERERS.
[I. L. R., 26 Mad., 79]

See EXECUTION OF DECREE—MODE OF EXECUTION—INSTALLMENTS.
[I. L. R., 24 All., 85]

See LAND-REVENUE.
[I. L. R., 25 Bom., 714, 752]

—by misrepresentation—

See LEASE—CONSTRUCTION
[I. L. R., 30 Calc., 883]

1. ESTOPPEL BY JUDGMENT.

1.—Competent Court—*Res judicata*—Civil Procedure Code (Act XIV of 1852), s. 13—Court of competent jurisdiction—Whether a decision of a previous suit for compensation was one of a Court of competent jurisdiction to bar a subsequent

ESTOPPEL—continued.

1. ESTOPPEL BY JUDGMENT—continued.

claim for compensation is a suit for arrears of rent as well as for compensation—Mixed question of law and fact.—A suit for compensation was brought in the Court of the Munsif at Goas in 1863 by the plaintiff (*patnidar*) against the defendant's predecessors (*darpaindars*), upon the basis of a *darpata*, *kabuliyat*, which stipulated that the *darpaindars* would deliver certain articles to the plaintiff's landlord, or in default they would compensate the plaintiff for any damage he might sustain. The Court (which had no jurisdiction to try suits for rent) gave a decree in the plaintiff for damages which she had sustained for the *darpaindars'* default. In a subsequent suit brought by the same plaintiff

for compensation for breach of contract, and, as the previous suit was not a suit for arrears of rent, nor was the claim in the subsequent suit, so far as it related to the amount of compensation under the stipulation, a claim for arrears of rent, so the deci-

the question being a mixed question of law and fact. A decision in a previous suit on a question of law, even if erroneous, would operate as *res judicata* in a subsequent suit. *Parthasaradi Ayyangar v. Chinna Krishna Ayyangar* (1882), I. L. R., 5 Mad., 304, dissented from *Bishnu Pritha Chowdhurani v. Bhada Sundari Datta* (1901)

[I. L. R., 28 Calc., 318]

2.—Decree—Whether a decree estops a person not a party to it—Evidence—Certain property conveyed by one Abdul Ali to his wife was purchased by one G at a sale held in execution of a mortgage

wife was a fictitious transaction, and a decree was made in G's favour. In a subsequent suit between G and one B, who was no party to the previous suit. Held that B was not estopped by that decree from disputing G's title to the property. *Brojendra Kumar Roy Chowdhury v. Gori Mohan Roy* (1903) 7 C. W. N., 574

3.—Representative of deceased plaintiff—Civil Procedure Code, s. 401 et seq.—Suit in *formd passiver*—Death of plaintiff—Decree passed in ignorance of plaintiff's death—Appeal—Consent

ENQUIRY.

See **INQUIRY.**

ENTICING AWAY MARRIED WOMAN.

See **ADULTERY** I. L. R., 30 Calc., 910
[7 C. W. N., 143]

EPIDEMIC DISEASES ACT (III OF 1897).

See **SANCTION FOR PROSECUTION—WHERE
SANCTION IS NECESSARY, OR OTHERWISE**
[I. L. R., 24 Mad., 70]

EQUITY OF REDEMPTION.

See **MORTGAGE.**

See **SALE IN EXECUTION OF DECREE—
MORTGAGED PROPERTY.**

See **TRANSFER OF PROPERTY ACT, s. 90.**
[I. L. R., 30 Calc., 463]

ERROR.

See **SALE IN EXECUTION OF DECREE—
ERRORS IN DESCRIPTION OF PROPERTY
SOLD.**

—affecting merits of case—

See **APPELLATE COURT—ERRORS AFFECT-
ING OR NOT MERITS OF CASE.**

See **WITNESS—CIVIL CASES.**
[I. L. R., 28 Calc., 37]

—in law—

See **APPEAL—ARBITRATION**
[I. L. R., 29 Calc., 167]

See **SPECIAL OR SECOND APPEAL—OTHER
ERRORS OF LAW AND PROCEDURE**

—**Accused—Offence triable as a warrant case—
Conviction of offence triable as a summons case—
Absence of charge—Conviction, legality of—
Material error—Criminal Procedure Code (Act
V of 1898), ss. 232, 242 and 254—Penal Code (Act
XLV of 1860), ss. 143 and 379.**—When a case is
being tried as a warrant case, and a charge is drawn
up of an offence which is triable as a warrant case,
and it is intended to proceed against the accused
also for an offence which is triable as a summons case.

trying Magistrate drew up a charge only for the
offence under s. 379, but convicted the accused only
for the offence under s. 143 of the Code: Held that
the offence under s. 143 should have formed part of
the charge, and that the accused was misled in his
defence by the absence of such a charge. **HOSSEIN
SARDAR v. KALU SARDAR (1902)**

[I. L. R., 29 Calc., 481; a.c., 6 C. W. N., 598]

ESCAPE FROM CUSTODY.

1.—**Aid of chaukidar—Power of a police-
officer to demand aid of a chaukidar in arresting
an accused—Code of Criminal Procedure (Act
V of 1898), s. 42 (a)—Lawful arrest Lawful
custody.**—A police-officer lawfully authorised to
arrest a person can demand the aid of a chaukidar,
under s. 42 (a) of the Code of Criminal Procedure,
in preventing the person from escaping by a certain
path; and the custody of a person so taken by the
chaukidar is, for the time being, lawful custody.
MANIK PAN v. KENARAM SINDAR (1901)

[6 C. W. N., 337]

2.—Arrest by private person—Act XLV

of 1860.
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Indian Penal Code does not apply to the person
who is the actual thief. Where, therefore, a person
whose bullock had been stolen in his absence traced
it to the house of the thief, and there and then
arrested him, and made him over to a chaukidar, from
whose custody he escaped, it was held that this
was not an escape from lawful custody, within the
meaning of s. 224 of the Code. *Semble* that,
if the owner of the bullock had himself been entitled
to make the arrest, the offence would not be made out.

3.—**Offence—Arrest—Cognizable offence—
Escape from lawful custody—“For any such
offence,” meaning of—Code of Criminal Procedure
(Act V of 1898), s. 54—Penal Code (Act XLV of
1860), ss. 144 and 224.**—The words, in s. 224 of the
Penal Code, “for any such offence” mean for any
offence with which a person is charged or for which
he has been convicted. So that it would be an offence
for a man to escape from custody after he had been
lawfully arrested on a charge of having committed
an offence, although he may not be convicted of such
latter offence. An accused person is no less guilty
than a convicted person, if he escapes from lawful
custody. In the present case the petitioners were
arrested by the police under the authority of s. 54
of the Code of Criminal Procedure. That arrest
was perfectly lawful, and the subsequent detention
was in lawful custody. **Ganga Charan Singh v.
Queen-Empress (1893), I. L. R., 21 Calc., 377,**
distinguished. **DEO SAMAY LAL v. QUEEN-EMPRESS
(1900)**

[I. L. R., 28 Calc., 253; a.c., 5 C. W. N., 289]

ESCHEAT.

—As to whether natural relationship to an adopted
son would be efficacious to intercept an escheat to the
Crown, *quere*. **MUTHAYYA RAJAGOPALA THEVAR
v. MINAKSHI SUNDARA NACHIAH (1901)**

[I. L. R., 25 Mad., 394]

EUROPEAN BRITISH SUBJECT—
*concluded.***—in Mysore, jurisdiction over—**

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4, 11 AND 8 . I. L. R., 26 Mad., 607

—jurisdiction to commit, to jail—

See HABEAS CORPUS, WRIT OF
[I. L. R., 29 Calc., 286]

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[I. L. R., 31]

OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES.
[I. L. R., 28 Calc., 142]

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See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE.
[I. L. R., 25 All., 546]

See CONSPIRACY.
[I. L. R., 30 Calc., 933]

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY PARTY.
[I. L. R., 25 All., 580]

See DIVORCE ACT, s. 35.
[I. L. R., 28 Calc., 221]

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[I. L. R., 27 Bom., 485]

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[I. L. R., 23 All., 20]

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ESTOPPEL—continued.**1. ESTOPPEL BY JUDGMENT—concluded.**

order for re-trial - Objection to plaintiff's representation in a
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[I. L. R., 25 All., 137]**2. ESTOPPEL BY CONDUCT.**

4.—**Legacy—Legacy in satisfaction of indebtedness.**—It was contended that plaintiff was estopped from claiming a legacy under the will, as he had disputed the validity of the latter, and had elected to take the Rs. 10,000 as a debt due to himself and no brother had
as family
him and had also claimed a share. It is true there was no estoppel, and that plaintiff's right to the legacy was not affected by that claim. **RAJAMANNAR v. VENKATAKRISHNAYYA (1902)**
[I. L. R., 25 Mad., 361]

5.—**Minor—Suit by minor.**—A minor, who, at the time of the contract, was a minor and incompetent

s.c. 11 C. W. N., 132

1872), ss. 11, 19, 64, 65—**Mortgage by minor—Persons competent to contract—Void contract—Advances on mortgage declared invalid, re-payment of.**—S. 115 of the Evidence Act (I of 1872) does not apply to a case where the statement relied

ESTOPPEL—concluded.**2. ESTOPPEL BY CONDUCT—concluded.**

within the meaning of the Act. A mortgage, therefore, made by a minor is void; and a money-lender who has advanced money to a minor on the security of the mortgage is not entitled to re-payment of the money on a decree being made declaring the mortgage invalid; ss. 64 and 65 of the Contract Act being based on there being a contract between competent parties, and being inapplicable to a case

7.—**Mortgage—Evidence Act (I of 1872), ss. 115, 116.**—Certain property was mortgaged in 1881. In 1889, the appellant took from the mortgagors and another person a lease of certain lands which

mortgagors were not entitled to the whole of the mortgaged property at the time the mortgage was executed in 1884, i.e., five years before the lease was taken by the appellant. **PROSUNNO KUMAR SEN v. MAHABHARAT SARKA (1903)** 7 C. W. N., 575

8.—**Sale—Equitable estoppel—Compromise petition—How far a party is entitled to contest the**

referred to. **UTTAM CHANDRA KRISHN v. KRISHNA NATH CHATTOPADHYA (1901)**

[I. L. R., 29 Calc., 577]**EUROPEAN BRITISH SUBJECT.**

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS

and as to take away the privilege of minority. **Nelson v. Stocker (1859), 4 Dr. G. and J., 453,** followed. On the true construction of the Contract Act (IX of 1872), a person who, by reason of infancy, is incompetent to contract, cannot make a contract

EUROPEAN BRITISH SUBJECT—
concluded.

—in Mysore, jurisdiction over—

*See FOREIGN JURISDICTION ACT, 1879, ss.
4, 11 AND 8 . I. L. R., 28 Mad., 607*

—jurisdiction to commit, to jail—

*See HABEAS CORPUS, WRIT OF
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[I. L. R., 20 Calc., 433]**PARTITION—REQUISITES FOR PARTITION
[I. L. R., 30 Calc., 738]**See LANDLORD AND TENANT—NATURE OF TENANCY . . . 7 C. W. N., 734**See POSSESSION—EVIDENCE OF POSSESSION.**See RES JUDICATA—ESTOPPEL BY JUDGMENT . . . I. L. R., 28 Calc., 109**See WITNESS—CIVIL CASES—CONSIDERATION AND WEIGHT OF EVIDENCE.***EVIDENCE—CIVIL CASES—continued.**

—accounts and account books—

*See PROMISSORY NOTES—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.
[I. L. R., 29 Calc., 334]*

—acknowledgment—

See LIMITATION ACT, 1877, SCH. 11, ART. 64 . . . I. L. R., 23 All., 502

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See CONFESSION.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—EVIDENCE, MODE OF TAKING, ETC.

See SECURITY FOR GOOD BEHAVIOUR.
[5 C. W. N., 249
I. L. R., 29 Calc., 779]

See WITNESS—CRIMINAL CASES.

—absence of—

See EASEMENT. I. L. R., 30 Calc., 918

—consideration of, and mode of dealing with, evidence—

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS
[I. L. R., 29 Calc., 128]

—examination of accused—

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS
[I. L. R., 28 Calc., 689]

—hearsay evidence—

See CRIMINAL PROCEDURE CODE, s 436
[5 C. W. N., 574]

—statements to police officers—

See DEFAMATION.
[I. L. R., 28 Calc., 794]

1. CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE

1.—Murder—Incomplete evidence—New trial—Further evidence—Admissibility of evidence—

take further evidence before judgment could properly be pronounced against the accused. Where, upon information received from the *chowkidar* of the offence (and which information was duly recorded in the station diary), the Sub-Inspector had gone to the Hospital to see the wounded man and had there recorded the statement made by him: *Held* that this record of such statement could in no sense be regarded as a first information of the offence, within the meaning of s. 154 of the Code of Criminal Procedure. *Held, further*, that the writing containing the statement so recorded by the Sub-Inspector and attested by witnesses could not be regarded as evidence. In order to make *II* evidence, the course indicated in the case of *Empress v. Samiruddin* (1881), I. L. R., 8 Calc., 211, should have been followed. KING-EMPRESS v. DATTAR KUNJRA (1902) . . . 6 C. W. N., 921

EVIDENCE—CRIMINAL CASES— continued.

2. CHARACTER.

2.—Criminal Procedure Code, ss. 107, 117—Security for keeping the peace—Evidence of general repute not available in such cases.—It is only in the case of a person who is an habitual offender, and is called upon to furnish security for good behaviour, that the fact of his being an habitual offender may be proved by evidence of general repute. Where a person is called upon to furnish security to keep the peace, evidence of . . . of the . . . do any . . . a breach . . . equility.

EMPEROR v. BIDHAPATI (1903)
[I. L. R., 25 All., 273]

3 DEPOSITIONS.

3.—Evidence Act, s 33—Deposition of a deceased

s 33 of the Evidence Act (I of 1872). QUEEN-EMPRESS v. BASVANTA (1900)
[I. L. R., 25 Bom., 168]

4.—Criminal Procedure Code (Act V of 1898), s 259—Statement of witness before committing Magistrate treated as evidence at a trial before Court of Session—Evidence duly taken—Under

case, at the trial where, for the purposes of justice, the adoption of such a course is found necessary by the Judge. QUEEN-EMPRESS v. DORASANI ATYAR (1901) . . . I. L. R., 24 Mad., 414

4. DYING DECLARATIONS

5.—Indian Penal Code (Act XLV of 1860), s 396.—Appellant was convicted and sentenced to transportation for life on a charge of dacoity. The most material evidence for the prosecution was . . . Surgeon, who made the post-mortem examination on the deceased, was not called, being on leave; but the Civil Surgeon, on a perusal of the notes left by the

EVIDENCE—CRIMINAL CASES—*continued.***4. DYING DECLARATIONS—concluded.**

Assistant Surgeon, gave evidence that the cause of the death of the deceased was pneumonia aggravated by a stab. In the notes themselves no cause of death was given, and there was no evidence as to how the pneumonia was aggravated. No explanation was given as to how the opinion was formed that the pneumonia was aggravated by the injury, and there

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by the
wounds received at the dacoity, or that the dacoity was the transaction which resulted in his death.
IMPERATRIX v. RUDEA (1900)

[L. L. R., 35 Bom., 45]

■—*Proof of record of declaration—Language in which declaration is made—Admissibility in evidence.*—**Evidence Act, 1872, s. 32 (1)**—A declaration, made by a person in expectation of death, recorded in the absence of the accused and in a language different from the one in which it is made, by an officer who is not examined in the case, cannot properly be used in evidence against the accused; and at any rate such a declaration should not be

Act; and that statement is not the document made
statement made
y of proving a
some witness
at liberty to
he note made
about the time
the statement is made. When such a declaration is not a continuous statement made by the dying person, but is elicited in answer to one or more questions, the document, to be really of use, should clearly set out the exact questions put and the answers made to them. **KING-EMPEROR v. MATRURA THAKUR (1901)** **6 C. W. N., 73**

5. MEDICAL EVIDENCE.

7.—*Post mortem report.*—A post mortem report cannot be used as evidence at the Sessions trial, except by way of refreshing the memory of the person who made it, or to contradict him. **RAM SAKUR RAY v. EMPEROR (1901)** **6 C. W. N., 98**

6. POLICE EVIDENCE, DIARIES, PAPERS AND REPORTS.

8.—*Written statement recorded by police-officer during police investigation—Admissibility in*

EVIDENCE—CRIMINAL CASES—*continued.***6. POLICE EVIDENCE, DIARIES, PAPERS AND REPORTS—concluded.**

of a written statement recorded by a police-officer, as evidence, to the matter of the charge which is actually under investigation by the police-officer when the statement is made. The prohibition extends

under that section. It is very irregular, in a charge of intentionally giving false evidence, to put the whole of a long statement before the jury at once

7. PREVIOUS CONVICTIONS.

conviction, as is required by s. 91 of the Evidence Act or s. 511 of the Code of Criminal Procedure.

8. STOLEN PROPERTY.

10.—*Act XLV of 1860 (Indian Penal Code), s. 380—Theft from a railway van—Property found in an adjoining van, in which four railway coolies*

EVIDENCE—CRIMINAL CASES—concluded.**8. STOLEN PROPERTY—concluded.**

connect one or more of them individually with the possession of the cloth. *KING-EMPEROR v. ALI HUSAIN* (1901) . I. L. R., 23 All., 306

EVIDENCE—PAROL EVIDENCE.

Col.

1. EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES . 357
2. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . "

See LIMITATION ACT, 1877, s. 19—ACKNOWLEDGMENT OF DEBTS

[I. L. R., 25 Mad., 220]

1. EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES.

1.—*Evidence Act (I of 1872), s. 92—Evidence*

kabuliyat was never intended to be acted upon or enforced, or that there was a waiver of some of its terms. The evidence that the *kabuliyat* was never intended to be acted upon or enforced, or that there was a waiver of some of its terms.

2. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

2.—*Evidence to vary deed—Evidence Act (I of 1872), s. 92—Evidence to show that a 'deed of sale' was meant to be a 'deed of gift'—*

ANDALUSIYAH v. LIEBHART (1855), I. L. R., 11 Calc., 486, distinguished. *RAHMAN v. ELABI BAKSH* (1900) . I. L. R., 28 Calc., 70

3.—*Evidence Act (I of 1872), s. 92—Conduct of parties—Oral evidence when admissible to prove that a conveyance is a mortgage by way of conditional sale—Admissibility of parol evidence to vary a written contract—Under*

EVIDENCE—PAROL EVIDENCE—continued.**2. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—continued.**

4.—*Evidence Act (I of 1872), s. 92—Acts and conduct of parties—Oral*

duct of parties, such as evidence of promise by the

5.—*Registered kabuliyat, proof of—Contemporaneous oral agreement*

not amount to such an agreement or release of a portion of the rent as to have a binding effect. *RAMA RAMAN CROWDER v. BROWASI PRASAD BROWASI* (1901) . 8 C. W. N., 60

6.—*Limitation Act (XV of 1877), s. 19, paragraph 2—Written acknowledgment—Date—Alteration—Where a written acknowledgment bears a date which has been altered, oral evidence to prove the date is*

7.—*Evidence Act (I of 1872), s. 92—Evidence to vary written instrument—Execution of sale deed—Subsequent redemption and on footing that the sale was in fact a mortgage—Evidence of subsequent conduct to show collateral agreement—Inadmissibility—On the*

EVIDENCE—PAROL EVIDENCE— continued.

2 VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—continued.

ment was not registered. On the 29th September, 1876, plaintiff executed a deed of sale of the land in defendant's favour, which was unconditional in its terms, and which was duly registered. Plaintiff subsequently brought a redemption suit against defendant on the deed of 29th September, and he contended that, although that deed was, in its terms, an absolute conveyance, he was entitled to adduce evidence of the subsequent conduct of himself and defendant, to show that the transaction was, in fact, not a sale but a mortgage. *Held* that the evidence was not admissible. *Balkishan Das v Legge* (1899), *I L R*, 27 *I A*, 68, followed. *Khanakar Abdur Rahman v Ali Hafes* (1900, ante, col 358), *I L R*, 28 *Cal*, 286, and *Mahomed Ali Hossein v. Nasar Ali* (1901, ante, col 35-), *I L R*, 28 *Cal*, 289, dissented from. Plaintiff further contended that the contract was not contained in the deed of sale alone, but must be gathered from both of the documents referred to above. *Held* that the document of 23rd September, being unregistered, was inadmissible in evidence, as it purported to create or limit an interest in the immovable property conveyed under the deed of sale. *Pranai Annee v Lakshmi Annee*, *I R*, 26 *I A*, 101, followed. *ACHUTARAMARAJU v. SUBBARAJU* (1901)

[*I L R*, 25 *Mad*, 7

8. —Evidence Act (I of 1872), s. 92, proviso 4—Registered document—Subsequent oral agreement—Contract Act (IX of 1872), s. 63—Remission of portion of promise—Discharge in full on receipt of portion of amount due—Evidence of oral agreement—In a suit for

at the rate stipulated in the registered lease, the discharge for one of the years was valid under s. 63 of the Contract Act, and took effect. It was immaterial that the discharge had been given in pursuance of the alleged oral agreement, which, though not admissible in evidence, was not illegal. *KARAMPALLI UNNI KUNDU v. THEKAY VITTIL MITHOBAILUTT* (1902) *I L R*, 26 *Mad*, 105

9.—Evidence to contradict deed—Indian Evidence Act (I of 1872), s. 92—Oral evidence

EVIDENCE—PAROL EVIDENCE— concluded.

2. VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—concluded.

to contradict the recital in a deed.—When one of the parties to a deed is, under any of the provisions of s. 92 of the Evidence Act, permitted to go into oral evidence, it is open to the other party also to rebut that evidence by oral evidence. Where a deed recited the payment of a certain consideration, and the plaintiff denied the passing of any consideration, and adduced evidence in support of his contention under the provisions of s. 92 of the Evidence Act, it is open to the defendants to go into oral evidence to show that there was some consideration for the deed, though not the same as that recited in the deed. *Lala Himmatt Sahai Singh v. Llewellyn* (1885), *I L R*, 11 *Cal*, 456; *Yusuf Chand v. Hirralal* (1876), *I L R*, 3 *Bom*, 159, referred to. *KAILASH CHANDRA NEOGI v. HARISH CHANDRA BISWAS* (1900) *S C W. N.*, 158

10.—Evidence of mere suretyship—Act I of 1872 (Indian Evidence Act), s. 92—Construction of document—Evidence of oral agreement not excluded.—The plaintiff sued to recover money which he had been compelled to pay in virtue of a mortgage executed by his two half-

mortgage-bond as a surety only. *SHAMSH-UL-JAHAN BEGAM v. AHMAD WALI KHAN* (1903)

[*I L R*, 25 *All*, 337

11.—Collateral agreement—Agreement between lessor and lessee collateral to the lease—Admissibility in evidence—Registration—Evidence Act (I of 1872), s. 92—Registration Act (III of 1877), s. 17—Act IV of 1882, ss. 105, 107.—An agreement by a lessee to pay for a term of years an annual sum of money to his lessor, forming no part of the terms of his holding, and no charge on the property leased, and being a mere personal obligation collateral to the lease, which, moreover, was to take effect at a future date after the said term of years had run out, is not affected by s. 92 of the Evidence Act, and does not require registration under s. 17 of Act III of 1877, read in conjunction with the Transfer of Property Act, 1882, ss. 105, 107. *SUBRAMANIAN CHETTIAR v. ARUNACHALAM CHETTIAR* (1902)

[*I L R*, 29 *I A*, 138;

S C I L R, 25 *Mad*, 603; *S C W. N.*, 865

EVIDENCE ACT (I OF 1872).

—SS. 6, 8—

See CRIMINAL PROCEDURE CODE, s. 436.
[*S C W. N.*, 574

—S. 10—

See CONSPIRACY. *I L R*, 38 *Cal*, 797
30 *Cal*, 983

EVIDENCE ACT (I OF 1872)—continued.

—s. 11—

See CRIMINAL PROCEDURE CODE, s. 436.
[5 C. W. N., 574]

See LEASE—CONSTRUCTION.

[I. L. R., 30 Calc., 883]

—s. 13—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—CRIMINAL COURT, PROCEEDINGS IN I. L. R., 29 Calc., 187

—s. 14—

See CRIMINAL PROCEDURE CODE, s. 436
[5 C. W. N., 574]

—s. 24—

See CONFESSION—CONFESSIONS TO MAGISTRATE. I. L. R., 25 Bom., 168, 543
[I. L. R., 26 Mad., 38]

—ss. 25, 26—

See CONFESSION—CONFESSIONS TO POLICE OFFICERS.

—s. 30—

See CONFESSION—CONFESSION OF PRISONERS TRIED JOINTLY.

—s. 32 (1)—

See EVIDENCE—CRIMINAL CASES—DYING DECLARATION. 6 C. W. N., 72

—s. 32 (1)—

See EVIDENCE—CRIMINAL CASES—CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE. 6 C. W. N., 921

—s. 32 (2): account sales—

See EVIDENCE—CIVIL CASES—ACCOUNT SALES. I. L. R., 28 Calc., 209

—s. 32 (4)—

See TRADE MARK
[I. L. R., 25 Bom., 433]

—s. 32 (5), (6)—

See TITLE—EVIDENCE AND PROOF OF TITLE—GENERALLY. I. L. R., 26 I. A., 1

—s. 32—

1.—Admissibility in evidence of statement in writing by person who could have been called as a witness, but was not—Statement of deceased persons—Where a person, although alive at the time the plaintiff closed his case, was not called as a witness, statements in writing by such person, filed before his death, in support of the plaintiff's case, were held by the Judicial Committee to be inadmissible in evidence as statements of a deceased person. A genealogical table purporting to have been made by a person since dead, but which was shown to be merely an exhibit binding on him for the purposes of a former suit, was held to be inadmissible in evidence, having been made without the personal knowledge and belief which must be found or presumed in any admissible statement by a deceased person. JAGATPAL SINGH v. JAGESHAR BAKSH SINGH (1902). I. L. R., 25 All., 143; [s.c. I. L. R., 30 I. A., 27; 7 C. W. N., 208]

EVIDENCE ACT (I OF 1872)—continued.

—s. 32—continued.

2.—Admissibility of evidence—Statements as to heirs, made in accordance with practice of public office—Proof of legitimacy of heirs named in such statements—A series of statements, extending from 1860 to 1890, by a *wasigadar*, made in accordance

and, under the circumstances, to be conclusive in their favour. BAGAR ALI KHAN v. ANJUMAN ABA BEGAN (1903)

[I. L. R., 25 All., 236;

s.c., I. L. R., 30 I. A., 94; 7 C. W. N., 465]

3.—CL (5)—Statement as to age of a member of a family by another member since deceased—Admissibility—A statement as to plaintiff's age, made by his sister, was admissible in evidence after her decease, under s. 32 (5) of the Evidence Act, the date of birth being the commencement of a relationship by blood, and therefore relating to the existence of such relationship within the meaning of the section. *Ram Chandra Dutt v. Jogeswar Narain Das*, I. L. R., 20 Calc., 783, followed. The defendant company's prospectus contained a condition that evidence of age of an assured would be required to be furnished in every case before a claim under a policy would be paid; and recommended assurers to provide

—s. 33—

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS

—s. 34—

See PROMISSORY NOTES—ASSIGNMENT OF, AND SETTING OF, PROMISSORY NOTES.
[I. L. R., 29 Calc., 334]

—s. 35—

See EVIDENCE—CRIMINAL CASES—POLICE EVIDENCE, ETC. I. L. R., 29 Calc., 348

—Even if the word "advised" had the meaning contended for, and signified that the right of presumption no longer existed, it was an entry which it was in excess of the duties prescribed for Settlement Officers in the district in question to make, and therefore no evidential value whatever could be attached to it. *In the matter of Juggan Lall* (1880), 7 C. L. R., 356, and *Queen-Empress v. Gurus Chander Banerjee* (1881), 1 L. R., 10 Calc., 1034, referred to. *All Nalin Khas v. Manik Chandra* (v.b. 1902). I. L. R., 25 All., 60

EVIDENCE ACT (I OF 1872)—continued.

—s. 36—

See EVIDENCE—CIVIL CASES—MARS
[7 C. W. N., 849]

—s. 42—

See TRADE MARK I. L. R., 25 Bom., 433

—s. 44—

See RIGHT OF SETT—

DECREES; . . . 5 C. W. N., 559
FRAUD . . . 7 C. W. N., 533

—*Res judicata*—Evidence—Competence of party, against whom a former judgment is set up as constituting *res judicata*, to show that such judgment was obtained by fraud or collusion.—When a subsisting judgment, order or decree, which is relevant under s. 40, 41 or 42 of the Indian Evidence Act, 1872, is set up by one party to a suit as a bar to the claim of the other party, it is not necessary for the party against whom such judgment, order or decree is set up to bring a separate suit to have the same set aside; but it is open to such party, in the same suit in which such judgment, order or decree is sought to be used against him, to show, if such be the case, that the judgment, order or decree relied upon by the other side was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion. *Nistarini Dassi v Nundo Lal Bose* (1899), I. L. R., 26 Calc., 891, *Rajib Panda v Lakhon Senth Mahapatra* (1899), I. L. R., 27 Calc., 11; and *Bansi Lal v Rangji Lal* (1895), I. L. R., 20 All., 370, referred to *BANSI LAL v. DRAPO* (1103). . . . I. L. R., 24 All., 242

—ss. 63, 64—

See post, s. 90 AND ss. 63, 64 AND 114.

—s. 68—

See DEED—EXECUTION 5 C. W. N., 454

—When a statement is made by a party in a suit—

—s. 70—

See DEED—ATTESTATION
[7 C. W. N., 384]

—s. 80—

See CONFESSION—CONFESSIONS TO MAGISTRATE . . . 7 C. W. N., 230

—s. 90—

1.—Ancient document, presumption as to genuineness of signature on issue.—Presumption not excluded, but has to be rebutted.—It is in the discretion of a Court whether it will raise the presumption in favour of a document for which a 20 of

EVIDENCE ACT (I OF 1872)—continued.

—s. 90—concluded.

the Evidence Act provides, but this discretion is not

if an ancient document coming from proper custody is refuted by a Court capriciously or for inadequate reasons. When the genuineness of a document purporting to be an ancient document is put in issue,

The presumption merely takes the place of the evidence which would, where a modern document is concerned, be necessary for the purpose of proving due execution, and it must be met and rebutted in the same way as direct evidence of execution in the case of a modern document. *Mussamut Phool Bibee v Goor Suran Doss* (1872), 18 W. R., 455; *Bokant Nath Kundu v. Lakhon Majhi* (1881), 9 C. W. N. 408. *Umi Chintamani v. Lakhon Majhi*

2.—Documents thirty years old.—Proper custody.—Presumption.—Per BARRY, J.—S. 90 of the Evidence Act (I of 1872) admits a presumption of the genuineness of documents purporting to be thirty years old, if produced from proper custody proved to have had a legitimate origin 'or' an origin the legitimacy of which the circumstances of the case render probable. It is not necessary that the documents shall be found in the best and most proper place of deposit. The section insists only on a satisfactory account of the origin of the custody, and not on the history of its continuance. Per ASTON, J.—S. 90 of the Evidence Act requires that a document must be produced from the proper custody. *SHARFUDIN VALAD TAJUDIN v. GOVIND BHAIJI BADE* (1902) . . . I. L. R., 27 Bom., 452

—s. 90 and ss. 63, 64 and 114—

—Genuineness of document.—No evidence that document

earlier date. This earlier document was not pro-

dence that the document, of the contents of which

EVIDENCE ACT (I OF 1872)—continued.**—s. 90 and ss. 93, 94 and 114—concluded.**

the exhibit was evidence, was in fact executed in 1862 between the parties mentioned; and, inasmuch as the exhibit was a copy and not the original, the presumption which, under s. 90 of the Evidence Act, may be made where a document over thirty years old is produced, ought not to be made. *Khetter Chunder Mookerjee v Khetter Paul Sreeterino, I L R, 6 Calc., 856*, referred to *APPATHURAI PATTAR v GOPALA PANIKKAR (1901)* [I. L. R., 25 Mad., 674]

—s. 91—

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS.

[I. L. R., 28 Calc., 689]

—s. 92—

See EVIDENCE—PAROL EVIDENCE

—s. 110—

See ONUS OF PROOF—POSSESSION, AND PROOF OF TITLE

[I. L. R., 25 Bom., 287]

—s. 111—

See ONUS OF PROOF—PRINCIPAL AND AGENT. . . I. L. R., 25 All., 358

—s. 112—

See EVIDENCE—CIVIL CASES—LEGITIMACY . . . I. L. R., 24 All., 445

See ONUS OF PROOF—LEGITIMACY [I. L. R., 25 All., 403]

Chit. R. v. . . .

EVIDENCE ACT (I OF 1872)—continued.**—s. 114—**

See ante, s. 40 AND ss. 63, 64 AND 114.

See ACCOMPLICE.

See DEED—ATTESTATION.

[7 C. W. N., 384]

See SAME FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.

[I. L. R., 30 Calc., 1]

—III. (c)—

See WARRANT OF ARREST—CIVIL CASES . . . 6 C. W. N., 845

—III. (g)—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD-CESS PAPERS.

[I. L. R., 30 Calc., 1033]

—s. 115—

See COMPANY—TRANSFER OF SHARES, AND RIGHTS OF TRANSFERREES.

[I. L. R., 26 Mad., 79]

See EJECTMENT, SUIT FOR.

[I. L. R., 29 Calc., 671]

See ESTOPPEL—ESTOPPEL BY CONDUCT.

See LANDLORD AND TENANT—NATURE OF TENANCY . . . I. L. R., 27 Bom., 515

See LAND-REVENUE.

[I. L. R., 25 Bom., 714, 752]

—s. 116—

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[7 C. W. N., 575]

See LANDLORD AND TENANT—NATURE OF TENANCY . . . I. L. R., 27 Bom., 515

—s. 118—

See WITNESS—CRIMINAL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES

[I. L. R., 23 All., 90]

—s. 124—

See PRIVILEGED COMMUNICATION.

[7 C. W. N., 246]

—s. 133—

See ACCOMPLICE

—s. 151—

See WITNESS—CIVIL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . . . 6 C. W. N., 513

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . . . I. L. R., 23 Calc., 694

(I of 1872), it is for those who dispute the paternity

of a child, the presumption of the husband to the wife, of to and

remained there up to the time of his death, and it was shown that a child, alleged to be that of her husband, was the child of the wife, and that it was born within the time necessary to give rise to the presumption under s. 112, the Judicial Committee, in the absence of any evidence to show that the

wife held at the given band must illness was but

11: s. 6 C. W. N., 146; I. R., 29 I. A., 17

EVIDENCE ACT (I OF 1872)—concluded.

—s. 155, cl. (3)—

—*Statements previously made by witnesses—Inadmissibility as substantive evidence.*—Two persons made statements to the effect that C and another robbed them and caused hurt while doing so. One statement was made to their employer, and the other to the head constable. C was subsequently charged, and these two persons were called as witnesses for the prosecution, but they then denied that C was one of the men who had assaulted them. Their previous statements were filed, but neither the employer nor the head constable was called to depose to the terms of the statements which the witnesses were said to have made. *Held* that the former statements referred to, and which implicated the accused, could be used only under s. 155 (3) of the Evidence Act, for discrediting their evidence, and not as substantive evidence against the accused. **KEMPERO v. CHERATH CHOYI KUTTI (1902)**

[I. L. R., 28 Mad., 191]

EXAMINATION FOR PLEADERSHIP OR MOOKHTEARSHIP.

See BOARD OF EXAMINERS.

[I. L. R., 28 Calc., 479]

EXAMINATION OF ACCUSED PERSON.

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS

[I. L. R., 28 Calc., 689]

See TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER . . . 5 C. W. N., 684

—*Examination of the accused under s. 342, Criminal Procedure Code.*

It is objectionable in direct examination to elicit obtaining from the accused some explanation in regard to matter which he had previously mentioned in his confession and has already repudiated as untrue, or to endeavour to elicit information in regard to statements made by a witness. **KING-KEMPERO v. BHUT NATH GHOSH (1902)** . . . 7 C. W. N., 345

EXCHANGE

See TRANSFER OF PROPERTY ACT, s. 118.

[5 C. W. N., 724]

[6 C. W. N., 905]

—of stamps—

See COURT FEES ACT (VII OF 1870), s. 34.

[I. L. R., 30 Calc., 921]

EXCISE LAWS.

See BENGAL EXCISE ACT.

See BOMBAY ABEKARI ACT.

See MADRAS ABEKARI ACT.

EXECUTION OF DECREE.

Col.

1. APPLICATION FOR EXECUTION, AND POWERS OF COURT 371
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See ATTACHMENT.

See BENAMI TRANSACTION—CERTIFIED PURCHASERS—CIVIL PROCEDURE CODE, s. 317.

See BENGAL TENANCY ACT, s. 143, CL. (A).
[6 C. W. N., 91]

See CIVIL PROCEDURE CODE—

s. 230;

s. 232;

s. 244;

s. 257A;

ss. 304 to 319;

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See CLAIM TO ATTACHED PROPERTY.

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[I. L. R., 28 Mad., 31]

" 28 Bom., 109

See DECLARATORY DECREE, SUIT FOR—REMOVING ATTACHMENT.

[I. L. R., 25 All., 347]

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[6 C. W. N., 829]

See FRAUDULENT DECREE.

[I. L. R., 30 Calc., 718]

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW.

[I. L. R., 24 Mad., 689]

EXECUTION OF DECREE—continued*See* **INSOLVENCY—****CLAIMS OF ATTACHING CREDITORS
AND OFFICIAL ASSIGNEE;****INSOLVENT DEBTORS UNDER CIVIL
PROCEDURE CODE—EXECUTION
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SUITS FOR MESNE PROFITS;****MODE OF ASSESSMENT AND CALCU-
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ART. 6 . . . 6 C. W. N., 763***See* **CERTIFICATE OF ADMINISTRATION.****[I. L. R., 24 Mad., 23***See* **CIVIL PROCEDURE CODE, s. 230.***See* **LIMITATION ACT, 1877.****[I. L. R., 28 Calc., 465***See* **LIMITATION ACT, 1877, SCH. II—****ART. 179;****ART. 180***See* **PRACTICE—CIVIL CASES—EXECUTION
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178 AND 179 . . . I. L. R., 24 All., 300****—joint decree—***See* **LIMITATION ACT, 1877, ss. 7 AND 8,
AND SCH. II, ART. 179.****[I. L. R., 25 Mad., 431****—notice of—***See* **LIMITATION ACT, 1877, SCH. II, ART.
179—NOTICE OF EXECUTION.****—order dismissing objection to—***See* **APPEAL—DECREES.****[I. L. R., 23 Calc., 81****—order setting aside sale is an order
relating to execution—***See* **SPECIAL OR SECOND APPEAL.****[I. L. R., 28 Calc., 110****—proceedings in execution—***See* **INSOLVENT ACT (11 & 12 VICT.,
c. 21) . . . I. L. R., 28 Calc., 419***See* **PRACTICE—CIVIL CASES—EXECUTION
PROCEEDINGS****—stay of—***See* **APPEAL—ORDERS.****[I. L. R., 24 Mad., 358***See* **APPEAL TO PRIVY COUNCIL—STAY OF
EXECUTION PENDING APPEAL.***See* **INJUNCTION.****—step in aid of—***See* **LIMITATION ACT, 1877, SCH. II, ART.
179—STEP IN AID OF EXECUTION.**

EXECUTION OF DECREE—continued.**2. TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—concluded.**

—Transfer of jurisdiction—*Civil Procedure Code (Act XII of 1892), ss. 223, 649—Bengal, N.W. P. and Assam Civil Courts Act (XII of 1887), ss. 13, 17—Execution of decree—Jurisdiction of Court, transfer of—Limitation Act (XII of 1877), s. 14—Execution of a decree of the Court of the Munsif of Nanabgunge having been taken out in the Court of the Munsif of Maldah by reason of transfer of the local jurisdiction of the*

*Kerjee v. Dano Nath Mukerjee (1897), I. L. R. 25 Cal. 313, distinguished. Held, further, that proceedings to enforce a decree taken bond fide before a Court which the party bond fide believes to have jurisdiction is a proceeding within the meaning of s. 14 of the Limitation Act. *Hara Lal v. Badri Dass (1890), I. L. R. 2 All. 792, referred to. JAYAR v. KAMALINI DEBI (1900)**

[5 C. W. N., 150;
s.c., I. L. R., 23 Cal., 238

3. EXECUTION BY COLLECTOR.

8.—Civil Procedure Code, ss. 310A, 320—S. 310A not applicable to proceedings in execution held by a Collector under s. 320—Held that the provisions of s. 310A of the Code of Civil Procedure have no application to execution proceedings taken by a Collector under s. 320 of the Code, and the rules framed by the Local Government thereunder, governing such proceedings. *SUREO PRASAD v. MUHAMMAD MOHSIN KHAN (1902)*

[I. L. R., 25 All., 167

4. MODE OF EXECUTION.**(a) INSTALLMENTS**

9.—Decree payable by instalments—Tender—Payment by money-order where creditor had to send to the Post Office for the money—Implied authority to pay in a certain manner.—A judge

the other hand, two previous instalments had been

EXECUTION OF DECREE—continued.**4. MODE OF EXECUTION—continued****(a) INSTALLMENTS—concluded**

paid in a similar manner without objection on the part of the decree-holder. On this occasion the decree-holder payee temporized, so that the money was not at once returned by the Post Office to the

same manner did not amount to an implied authority to the judgment-debtor to pay by money-order. *Poiglass v. Oliver (1831), 37 R. R. 683, referred to. KISHAN PRASAD v. BEVI RAM (1901)*

[I. L. R., 34 All., 85

(b) JOINT PROPERTY.

10.—Hindu law—Joint Hindu family—Money decree against father—Liability of sons who were not parties to decree—Suit for declaration of son's liability—The plaintiff, in a suit upon a bond executed by one Sarju Prasad, obtained a simple money decree against Sarju Prasad. In execution of the

*Paramanick v. Hari Govind Sika (1902), I. L. R. 26 Cal., 677, followed. *Nathoo Lal Chordhra v. Shoukes Lal (1902), 10 D. L. R. 240, referred to. MATURIA PRASAD v. RAMCHANDRA RAO (1902)**

[I. L. R., 25 All., 67

(c) MORTGAGE.

11.—Sale of mortgaged property—Order absolute for sale—Transfer of Property Act (II of 1882), s. 69—An order absolute for sale under the provisions of the Transfer of Property Act must indispensably necessary as a condition precedent for the sale of a mortgaged property in execution of a mortgage decree; it is sufficient that there is an order for sale passed on the application of the decree-holder. *Dina Pershad Mehta v. Nando Lal Kar Mahapatra (1900), I. L. R. 17 Cal., 132, and *Tari Prasad Roy v. Bhobaleb Roy (1903), I. L. R. 22 Cal., 231, referred to. PHUL CHAND RAY v. NERSING PERSHAD MISHRA (1900)**

[I. L. R., 23 Cal., 73

EXECUTION OF DECREE—continued.**A. MODE OF EXECUTION—continued.****(c) MORTGAGE—continued.**

12.—*Act IV of 1882 (Transfer of Property Act), ss. 83, 89—Decree for sale after redemption of prior mortgages—Payment of money due on the prior mortgages after the time limited by the decree—Effect of such payment.*—In a suit for sale on a mortgage in which there were prior mortgages to be redeemed, the plaintiff obtained a decree for sale conditioned on his redeeming the prior mortgages within two months. He did not do so, but about four months after the date of the decree paid the money due on the prior mortgages into Court. Held that, the defendant having taken no steps to redeem, the plaintiff was entitled to the benefit of this payment, though made after time, and to a decree absolute for sale. *Nihal v. Mitler Sen* (1898), *I. L. R.*, 20 All., 446; *Raham Ha'*

75; and *Sita*

21 All., 44,

(1896), *I. L.*

as distinguished. DEBI PRASAD v. JAI KARAN SINGH (1903). *I. L. R.*, 24 All., 479

13.—*Act IV of 1882 (Transfer of Property Act), ss. 89, 90—Decree for sale of part only of the mortgaged property—Property sold*

insufficient to satisfy the mortgage-debt, the decree-holder applied for a decree over, under s. 90 of the Transfer of Property Act, against the unhypothecated property of the mortgagor. Held that, the original decree having been in fact passed, whether rightly or wrongly, for sale of a part only of the mortgaged property,

of the remaining portion proves insufficient to satisfy the mortgage-debt, obtaining a decree under s. 90 of the Transfer of Property Act against the unhypothecated property of the mortgagor. *SHZO PRASAD v. BHARI LAL* (1902)

(I. L. R., 25 All., 79)

14.—*Act IV of 1882 (Transfer of Property Act), s. 89—Order absolute for sale of a portion of the mortgaged property only—Proceeds of sale of such portion insufficient to satisfy decree—Application for further order absolute for sale of other property.*—If an order absolute for the sale of a portion only of the mortgaged property has been obtained by the mortgagee decree-holder, and the proceeds of the sale of that portion prove insufficient to satisfy the decretal debt, there is nothing in law to prevent the decree-holder from

EXECUTION OF DECREE—continued.**4. MODE OF EXECUTION—concluded.****(c) MORTGAGE—concluded.**

obtaining a further order to sell another portion of the mortgaged property, provided that his application is within limitation. *BALNISHANJI MAHARAJ v. MITRU LAL* (1902). *I. L. R.*, 25 All., 212

15.—*Act IV of 1882 (Transfer of Property Act), ss. 83, 89—Order absolute for sale of part of property mortgaged—Appeal from decree—Application for further order for sale of entire property for an amount including interest accrued pending the appeal.*—Certain mortgagors in whose

judgment-debtors' appeal, applying for and obtaining a further order absolute for sale of the whole of the mortgaged property for an amount including the interest accrued due subsequently to the passing of the first order. *SAT NARAIN v. RADHA KISHAN* (1903)

(I. L. R., 25 All., 264)

5. EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES

16.—*Landlord and tenant—Relief against foreclosure for non-payment of rent*

The decree contained a stipulation that, if default should be made in payment of rent within the time fixed for payment each year, the lease should be forfeited. Default was made, and possession of the lands and the arrears of rent were sought for in execution of the decree, when it was objected that the

suscepted the contract with all its incidents. It was therefore competent to the Court to relieve against the foreclosure. *Sairakuli Timapa Hegda v. Mahabhaiga*, *I. L. R.*, 10 Bom., 435, disallowed from. *Rai Balkrishna Dass v. Raja Ram Bahadur Singh*, *L. R.*, 10 I. A., 162, referred to. *NAGARAJA v. VENKAT RAO* (1900). *I. L. R.*, 24 Mad., 265

17.—*Installment decree—Agreement before decree not to enforce payment of an installment—Part*

EXECUTION OF DECREE—continued.**EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES—concluded.**

payment—*Civil Procedure Code (Act XIV of 1882), s. 244—Limitation*—A decree being once made, it must be taken to be conclusive between the parties. When an instalment decree was duly made, neither an agreement that the payment of a certain instalment would not be enforced, alleged to have been come to between the parties before the decree was made, nor a plea of payment of a part of the claim, alleged to have been made before the decree for the full claim was made, can be given effect to. *Laldas Narandas v. Kishordas Devadas (1896)*, I. L. R., 23 Bom., 463, distinguished. *Benode Lal Pakrashi v. Brajendra Kumar Bhaha (1902)*, I. L. R., 30 Cal., 810; [8 C. W. N., 833]

6. EXECUTION BY AND AGAINST REPRESENTATIVES.

260—Plaintiff obtained a decree against defendant,

1882); and (3) that, the original defendant having died, the injunction could not be enforced against his son (the appellant), as an injunction does not run with the land. *Held*, as to the first objection, that, as it was not raised in the lower Courts, it could not be entertained on second appeal. As to the second objection: *held* that the order passed by the lower Courts was wrong. Their order should have been made under s. 260 of the Code of Civil Procedure (XIV of 1882). The application for execution was not in proper form, but the High Court allowed it to be amended. As to the third objection: *held* that, having regard to the provisions of s. 234 of the Civil Procedure Code, 1882, the injunction

EXECUTION OF DECREE—continued**6. EXECUTION BY AND AGAINST REPRESENTATIVES—continued.**

ordered against the deceased defendant might be

19.—Defendant Company—Civil Procedure

(1903) I. L. R., 30 Cal., 981

Bhaya (1895), I. L. R., 20 Bom., 345 dissented from *Yenkatarama v. Senthirela (1890)*, I. L. R., 13 Mad., 263; *Lachmi Narain v. Kanti Lal (1894)*, I. L. R., 16 All., 449; and *Eganph Lal v. Gopal Lal & another (1888)* were reported [Macpherson and GHOSE, JJ.] relied upon. The question whether the decree was obtained against the father in his representative capacity cannot be gone into in the course of execution of the decree. *Juga Lal Chaudhri v. Arun Bhari Prasad Singh (1900)*, 6 C. W. N., 223

21.—Widow—Parties—Decree against widow, whether binding upon person to whom the estate passes after widow's death B executed a deed, under which he gave his adoptive mother, J, during her lifetime, full power to enjoy possession of certain properties. Some alluvial lands formed on the bank of one of these properties, and were taken possession

EX PARTE DECREE—concluded.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—NEW TRIAL. I. L. R., 30 Calc., 588

EX PARTE PROCEEDING.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION. 6 C. W. N., 925

EXPECTANCY.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—EXPECTANCY.

EXTINGUISHMENT OF RIGHT.

See LIMITATION ACT, 1877, s. 28.
[5 C. W. N., 545]

F**FACT.**

—questions of—

See CONCURRENT JUDGMENTS ON FACTS.

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTIONS OF FACT

FALSE CHARGE.

See COMPENSATION—CRIMINAL CASES—TO ACCUSED, ON DISMISSAL OF COMPLAINT. I. L. R., 30 Calc., 123

See COMPLAINT—

INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES;
[I. L. R., 30 Calc., 415]

DISMISSAL OF COMPLAINT—POWER OF, AND PRELIMINARIES TO, DISMISSAL. 6 C. W. N., 295

See SANCTION FOR PROSECUTION—WHEN SANCTION MAY BE GRANTED.

[5 C. W. N., 254]

1.—Penal Code, s. 211—Indian Penal Code (Act XLY of 1860), s. 211—Code of Criminal Procedure (Act V of 1898), ss. 3 (h), 195, 476—Giving false information to police of an offence, order for prosecution for—"Complaint", meaning of—Judicial proceeding—Jurisdiction of Magistrate—Procedure.—Where, upon a police-report that a complaint is false, the complainant is called upon to show cause why he should not be prosecuted under s. 211, Indian Penal Code he appears, and the Magistrate examines him and his witnesses, and upon that evidence comes to the conclusion that the charge is false, he can then proceed under s. 476 of the Code of Criminal Procedure and direct a prosecution. *Mandi Dazai v. Nawrang Lal* (1900), 4 C. W. N., 85, distinguished. The Magistrate does not exercise a proper discretion when, on receipt of a police-report that the complaint is false, he forthwith orders the complainant to be prosecuted under s. 211, Indian

FALSE CHARGE—continued.

Penal Code. The complainant should be given a reasonable time and full opportunity to prove his case before sanction is given for his prosecution. The sanction of a Magistrate to the prosecution of a complainant for a false charge.

2.—It is improper for a Magistrate to hold a *judicial* inquiry into the matter before proceeding further. *LALJI GOPE v. GIRIDHARI CHAUDHURI* (1900) 5 C. W. N., 108

3.—It is improper for a Magistrate to hold a *judicial* inquiry into the matter before proceeding further. *LALJI GOPE v. GIRIDHARI CHAUDHURI* (1900) 5 C. W. N., 108

3.—Penal Code (Act XLY of 1860), ss. 192, 211—False charge to police of cognizable offence—False information to public servant with intent to use his lawful power to the injury of another—Charge partly true and partly false—Charge if maintainable—Reference by Presidency Magistrate—Criminal Procedure Code (Act V of 1898), s. 432.—When a

depend upon its own circumstances. *GIRIDHARI NAIK v. EMPRESS* (1901), 5 C. W. N., 727

4.—Complaint—Dismissal of complaint as false, vexatious and malicious.

plaintain and the accused, the complaint made was both false and malicious and made with some deliberation, and that the complainant, with intent to cause injury to the accused, instituted criminal proceedings against him, knowing that there was no just and lawful ground for such proceedings: Held that it was a case in which proceedings under s. 211 of the Penal Code should have been instituted against the complainant, and that the Magistrate, in passing an order under s. 250 of the Criminal Procedure Code, directing the complainant to pay compensation to the accused, did not exercise a proper discretion. *KINA KARMARAK v. PRASO NATH DUTT* (1901) [I. L. R., 29 Calc., 479]

5.—False charge before Police.—The making of a false charge before the Police falls within the first portion of s. 211, Indian

FALSE CHARGE—concluded.

Penal Code *Queen-Empress v. Karim Bux* (1887), *I. L. R.*, 14 Cal., 633, followed. *RAM LOGAN LAL v. EMPEROR* (1903). *7 C. W. N.*, 556

8. ————— *Penal Code (Act XLV of 1860)*, s. 211, 182—*Instituting false complaint—Giving false information—The word*

tion was presented with the object (as the Judge held from its terms) of bringing to the knowledge of the authorities certain matters regarding which the petitioner had received information, in order that there might not be a repetition of an

to a "charge" within the meaning of s. 182 of the Indian Penal Code. To constitute an offence under s. 182, it must be shown that the person giving the information knew or believed it to be false, or that the circumstances in which the information was given were such that the only reasonable inference is that the person giving the information knew or believed it to be false. The fact that an information is shown to be false does not cast upon the

FALSE EVIDENCE.

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See ATTEMPT TO COMMIT OFFENCE.

[*I. L. R.*, 35 All., 750

See CHARGE—FORM OF CHARGE.

[*I. L. R.*, 38 Cal., 434

See CRIMINAL PROCEEDINGS.

[*I. L. R.*, 24 Mad., 675

See FORGERY.

See JURISDICTION—CAUSES OF JURISDICTION—CITATION OF ACTION—FALSE EVIDENCE.

See SANCTION FOR PROSECUTION—DISCRETION IN GRANTING SANCTION.

[*I. L. R.*, 29 Cal., 887

FALSE EVIDENCE—continued.**I. GENERAL CASES.**

1.—*Charge—Criminal Procedure Code (Act V of 1898)*, s. 195, 477—*Bail, order for, before commitment—Preliminary inquiry—Charge, framing of, if absolutely necessary—Jurisdiction—Penal Code (Act XLV of 1860)*, s. 193—*False evidence, giving of.*—s. 477 of the Code of Criminal Procedure contemplates that there should be a

out any reference to the specific false statements alleged to have been made by the witness in the course of a judicial proceeding, it was held that the order could not be regarded as a commitment under s. 477, Criminal Procedure Code. Such an order is not warranted by law, and is without jurisdiction. *MOHAM CHANDER MOHAMMAD v. KING EMPEROR* (1901). *5 C. W. N.*, 615

2. ————— *Commitment—Criminal Procedure Code*

3. ————— *Difference in procedure between the provisions of ss. 476 and 477—Applicability of the sections—Penal Code (Act XLV of 1860)*, s. 193—*False evidence, giving of.*—s. 477 of the

evidence was given by a witness before a Deputy Magistrate, which was in conflict with the statements of certain other witnesses, and the Deputy

person to show that his statements were not true on his knowledge. *After that the order was made to be facts of the present case was s. 477, and that the commitment of the person under s. 477 was*

FOOD.

—adulteration of—

See CALCUTTA MUNICIPAL ACT (BEN. ACT III OF 1899), s. 495.

[I. L. R., 30 Calc., 643

—destruction of—

See CALCUTTA MUNICIPAL ACT (BEN. ACT III OF 1899), ss. 502, 505.

[I. L. R., 30 Calc., 421

FORECLOSURE.

See MORTGAGE—FORECLOSURE.

FOREIGN COURT.

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FOREIGN COURT, JUDGMENT OF.

—admissibility of, in evidence—

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—against insolvent, validity of—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—PRINCIPAL AND AGENT. I. L. R., 28 Mad., 544

L. SUTTON—Private international law—Foreign Court—Suit on a foreign judgment to recover money due for board, lodging and tuition—Con-

6—Order XI, Rule 1 (e), under the Judicature Act—Residence in England, if necessary to fix liability on a foreign judgment—Interest on money decreed, when no provision for such is made in foreign judgment, if recoverable—Order XLII, Rule 16—1 & 2 Vict., c. 110, s. 17—Indian Interest Act (XXII of 1839)—As a general rule, a Court can exercise jurisdiction over a foreigner,

foreigner by reason of the cause of action arising within its jurisdiction, and that foreigner is a native of British India, he cannot treat the judgment passed as a nullity merely because he did not reside within the jurisdiction of the Court which passed

FOREIGN COURT, JUDGMENT OF—concluded.

within the order. But it is open to a defendant to show that this is not so, and that the English Court had in fact no jurisdiction. *Gurdial Singh v. Raja of Faridkot* (1891), L. R., 21 I. A., 171, followed and explained. In a suit based on a foreign judgment, the plaintiff cannot recover more than appears on the face of the judgment; and, when such judgment is silent as to interest, he cannot make the defendant liable for interest on the amount of the English judgment, the English Statutes as to judgments carrying interest (Order 42, Rule 16, and 1 & 2 Vict., c. 110, s. 17) not applying to India *MOAZIM HOSEIN v. ROBINSON* (1901) 5 C. W. N., 741; s.c., I. L. R., 28 Calc., 641

2. —Domicile—Defendant not resident or domiciled in foreign country—No appearance by defendant or submission to jurisdiction—Jurisdiction—"Foreigner"—Subject of the Sovereign both of British India and of a British colony.—Courts generally exercise jurisdiction only over persons who are within the territorial limits of their jurisdiction, and, apart from some statutory power, cannot exercise jurisdiction over anyone beyond its limits *W. Halsey v. Esdaile* (1858), L. R., 32 Ch. D., 131, referred to. A judgment of a foreign Court, obtained in default of appearance

subject of a Sovereign who is the Sovereign of the country where the judgment was obtained and the country where it is sought to be enforced *Turnbull v. Walker* (1892), 67 L. T. Rep., 767, referred to. *KASSIM MAHMOOD v. ISAF MAHMOOD SULLIMAN* (1902)

[I. L. R., 29 Calc., 503; s.c., 6 C. W. N., 629

FOREIGN JURISDICTION ACT (XXI OF 1879).

—ss. 4, 11 and 8—

—Criminal Procedure Code, s. 3—Indian Penal Code, s. 40—Offence—Jurisdiction of Magistrate in Mysore to try and convict an European British subject for an act amounting to an offence under the Mysore law, but not an offence under the Indian Penal Code.—An European British

he was so tried and convicted (namely, being in possession of mining materials) constituted an offence

FOREIGN JURISDICTION ACT (XXI OF 1879)—concluded

—ss. 4, 5 and 8—concluded

under the Mysore Mines Regulation, but was not an offence under the Indian Penal Code. It was contended, in revision, in the Madras High Court that the conviction was wrong on the ground that a

used in s. 6 of the Act of 1879, is not restricted to offences as defined by s. 40 of the Indian Penal Code. Nor is it restricted to any definition of "offence" to be found in the Code of Criminal Procedure, although, as a matter of fact, the present definition of "offence" in the Code of Procedure [s. 4 (a)], which is the same as that contained in the General Clauses Act, is sufficiently wide to include the wrongful act with which the accused in the present case was charged. *ADAMS v. EMPRESS* (1103) . . . I. L. R., 28 Mad., 607

FOREIGN STATE.

—effect of insolvency proceedings in—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—PRINCIPAL AND AGENT . I. L. R., 28 Mad., 544

FOREIGN TERRITORY.

—taking evidence in—

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FOREIGNERS.

—jurisdiction over—

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—suits against—

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FOREST ACT (MAD. ACT V OF 1883).

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FOREST OFFICER.

—liability of, in tax—

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FORFEITURE OF PROPERTY.

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See PAYMENT INTO COURT.

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—Lands attached under s. 140 of the Code of Criminal Procedure, 1898, can never be forfeited to the Government. *RAJAH OF VENKATAGIRI v. ISKAPALLI SUBBIAH* (1902) . . . I. L. R., 28 Mad., 410

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See CHARGE—FORM OF CHARGE.

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" 30 Calc., 822

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[5 C. W. N., 313

See SANCTION FOR PROSECUTION—DISCRETION IN GRANTING SANCTION.

[I. L. R., 29 Calc., 887

See WILL—VALIDITY OF WILL.

[8 C. W. N., 787

1.—*Penal Code (Act XLV of 1860), ss. 466, 471*—Using as genuine a forged document—Person convicted of and sentenced for the forgery not also to be sentenced for the use.—Held that a person who, being himself the forger thereof, has used as genuine a forged document, cannot be punished as well under s. 471 of the Indian Penal Code for the use as under s. 466 for the forgery. *QUEEN-EMRESS v. UMRAO LAL* (1900) [I. L. R., 23 All., 84

2.—*Penal Code (Act XLV of 1860), ss. 24, 25, 467, 471*—Using a forged document, knowing it to be forged. "Fraudulently" and "dishonestly," meaning of—"False document"—Suit upon a bond for enforcement of payment.—Absence of intention to cause wrongful loss, if any defence.—Intention to deceive.—Intention to cause wrongful loss to another, and deception, actual or intended, are not necessary ingredients of the intent to defraud. There is a real distinction between the meaning of the terms "fraudulently" and "dishonestly", as used in the Penal Code; the former denotes an intention to deceive. The production of a forged bond by a person in a suit, with the intent to make the Court believe that he was entitled to recover money upon the basis of the parti-

Emress (1894), I. L. R., 21 Calc., 313; *In re Dhanu Kates* (1892), I. L. R., 9 Calc., 53, referred to. *Queen-Emress v. Siro Doyal* (1885), I. L. R., 7 All., 459, dissented from. *KIRAN NATH CHATTERJEE v. KISO-EMRESS* (1901) 5 C. W. N., 897

FORGERY—continued.

3.—*Penal Code (Act XLV of 1860), ss. 463, 464, 467, 474—Forgery of valuable security—False document—Onus of proof—Dishonest or fraudulent intent, proof and inference as to.*—To justify a conviction under s. 457, Indian Penal Code, it must be shown that the document is a false document within the meaning of s. 464, Indian Penal Code, and that it was forged by the accused with some intent mentioned in s. 463, Indian Penal Code. It is not sufficient that some possible intent may be inferred from the facts, but it is necessary that such intent should be established by evidence. The accused was found in possession of two documents; one was a registered conveyance in respect of certain lands from one A D to the wife of the accused; the second purported to be a conveyance in respect of the same lands from the same vendor to the accused himself, but this was registered. The accused requested a school-boy to have the registration endorsement from the former copied on to the latter, and was thereupon arrested and charged under s. 467 with s. 116, and under s. 474. At the trial A D deposed that he never executed the second conveyance, but as regards the first he said that he had executed it in favour of accused's wife, but that the accused was in possession of the lands and had also paid him the consideration-money. Held that, as it was not shown that the second document was made with any of the intents mentioned in s. 463, Indian Penal Code, or that it was intended to be fraudulently or dishonestly used, a conviction under any of the above sections was not maintainable. *KAILAS CHANDRA DAS v. THE CROWN (1902)* . . . 6 C. W. N., 382

4.—*Penal Code (Act XLV of 1860), ss. 417, 511, 468—Attempting to cheat, and forgery—Application to University for duplicate certificate by person not entitled—Offence—S held a Matriculation certificate which had been issued to him by a University. C had failed to pass the Matriculation Examination. The Registrar of the University received a letter from S asking to be allowed to sit at the examination. S wrote a letter to the Registrar, and S had not that a dup[licate] letter head-master of a local school, corroborating the statement as to the loss, and supporting the application for the issue of a duplicate. This document had not, in fact, been written by the head-master, and S had not*

accused on both charges. The Sessions Judge, on appeal, allowed the accused to change of attorneys to

in the High Court: Held that the charge of cheating must fail, inasmuch as there was no proof that the deception practised by the accused on the Registrar of the University had caused harm or damage to him or to the University which he represented. Nor was it shown that the accused, in applying for the duplicate certificate, had any intention of

FORGERY—concluded.

causing wrongful gain to himself or wrongful loss to the University, to whom he had paid a fee greater than the cost price of the certificate. The charge of forgery also failed, for, assuming that accused had fabricated the head-master's certificate, it was not shown that he had done so fraudulently or dishonestly and with intent to cause damage or injury to the public or to anyone. The question before the Court was not as to his intended use of the certificate subsequently. Even if he had such an intention, this mere preparation did not amount to an attempt to commit an offence within the meaning of s. 511 of the Indian Penal Code. *KING-EMPEROR v. SHIVTASAN (1902)* . . . I. L. R., 25 Mad., 726

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1.—*Abuse of influence*—The obtaining of property or of any benefit, through the undue and unconscientious abuse of influence by a person in

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2 ALLEGING OR PLEADING FRAUD

2.—*Appeal*—A question of fraud cannot be

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I. L. R., 10 Bom., 339, and *Natesa Ayyar v. Annasami Ayyar* (1901), I. L. R., 25 Mad., 426, referred to *PASUPATI NATH BOSE v. NANDO LAL BOSE* (1903). I. L. R., 30 Calc., 718

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See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL
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See REVISION, CRIMINAL CASES—DISCHARGE OF ACCUSED.

G**GAMBLING.**

See CONTRACT—WAGERING CONTRACTS

1.—*Bengal Act—Gambling Act (Ben. Act II of 1867), s. 1, 6*—Gambling in a common gaming-house—Common gaming-house—Private house—Coin

of and when instruments of gambling

articles or instruments are found is a common gaming house within the meaning of the Act. *AMRIT SINGH v. KING-EMPRION* (1901)

[5 C. W. N., 203]

2.—*Gambling Act (Ben. Act II of 1867), s. 11*—Ground enclosed by high wall forming a *thakurbari*, whether a "place" within the section—Place, meaning of—Public place—Cooperation of money for which game is played—The word "place", as used in s. 11 of the Gambling Act (Ben. Act II of 1867), cannot but refer to a public place, and is used *ejusdem generis* with the other words in the section, public market, fair, street, thoroughfare, and the place must be of the same

GAMBLING—concluded.

character as a public market, fair, street or thoroughfare. A *thakurbari* surrounded by a high compound wall is not a public place as contemplated by the section. When a conviction under s 11 of Ben Act II of 1867 is set aside, the order for confiscation of the money for which the game was played must necessarily fall. *KHURI SHIKH v. KING-EMPEROR* (1901) . . . 6 C. W. N., 33

3.—**Bombay Act—Bom Act IV of 1887, ss. 3, 4, 6 and 7—Instruments of gaming—Books and telegrams—Game—Procedure—Police—officer investigating offence not to conduct prosecution—Criminal Procedure Code (Act V of 1898), ss 495 (cl. 4) and 537.**—The accused was partner in a shop at Surat, in which he ostensibly he also actually carried on a *satta*, or nagering business. The wagers were made with regard to the last opium was sold at Calcutta on a given day. Information as to these sales was received by telegraph from Calcutta. The firm kept books in which the wagers were recorded. The accused was convicted and sentenced under ss 4 and 5 of Bombay Act IV of 1887. *Held by CANDY and FULTON, JJ* (concurring) the conviction under s 4), that the books kept by the firm for the purpose of recording the wagers were "instruments of gaming" within the definition of s 3 of Bombay Act IV of 1887. *Held by CANDY, J*, that the telegrams received and used for the purpose of determining the result of the bets were also within the definition. *Held also* (setting aside the conviction under s 5) that the wagering with which the accused was charged was not a "game", and the presumptions under s 7 and cl. 2 of s 5 of the Act did not apply. A police Inspector, who has taken part in the investigation into an offence, is not qualified to conduct the prosecution of the person charged with that offence (Criminal Procedure Code, Act V of 1898, s 495, cl. 4). *EMPEROR v. TRIBHOVANDAS BHIBHUKANDAS* (1902) . . . I. L. R., 28 Bom., 583

4.—**Power of seizing money—found therein—Interpretation.**—The power of seizing money found in a gaming house, under s 8 of Bombay Act IV of 1887, does not extend to money found on the persons of those who may at the time be in such gaming house. *EMPEROR v. WALLI MESSAJI* (1902) [I. L. R., 28 Bom., 641]

5.—**Penal Code—Indian Penal Code (XLV of 1860), ss. 268, 290—Gambling, whether an offence where the Gambling Act is not in force—Whether gambling is a public nuisance—Gambling is not an offence such as is defined in s 268, Indian Penal Code (public nuisance).** Certain persons were found to have gambled at a place where the Gambling Act was not in force, and were convicted under s. 290, Indian Penal Code (public nuisance). *Held* that the conviction was bad. *SASI KUMAR ROSE v. EMPEROR* (1903) . . . 7 C. W. N., 710

GAMING HOUSE.

See **GAMBLING** . . . 5 C. W. N., 503

GANJAM AND VIZAGAPATAM AGENCY COURTS ACT (XXIV of 1839).

See HIGH COURT, JURISDICTION OF—MADRAS—CIVIL.

See [I. L. R., 26 Mad., 268] & [I. L. R., 24 Mad., 345]
See RULES MADE UNDER ACTS—ACT XXIV OF 1839 . . . I. L. R., 24 Mad., 345

GARHWAL.

See KUMAON AND GARHWAL.

GENERAL CLAUSES ACT, 1887 (I OF 1887).

—s. 3, c. (13)—

See VALUATION OF SUIT—SUITS—PARTITION . . . I. L. R., 24 All., 381

GENERAL CLAUSES ACT (X OF 1897).

—s. 3 (27)—

See NEPAL . . . 7 C. W. N., 635

—s. 8 and s. 24 ("order")—

See PETROLEUM ACT (VIII of 1899), ss. 1 (3), 11 AND 15 . . . 7 C. W. N., 658

GENERAL CLAUSES ACT (BEN. ACT I OF 1899).

—s. 8—

See CALCUTTA MUNICIPAL ACT, 1890, ss 391 AND 449 . . . 7 C. W. N., 374

—s. 8 (c)—

See CALCUTTA MUNICIPAL ACT, 1890, s 449 . . . 7 C. W. N., 554

GENERAL CLAUSES ACT (MADRAS).

See MADRAS GENERAL CLAUSES ACT.

GHATWALI TENURE.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—EXPECTANCY.

[I. L. R., 28 Calc., 483]

See PARTITION—RIGHT TO PARTITION—PARTITION OF PORTION OF PROPERTY.

[7 C. W. N., 185]

—Power of alienation—*Ghatwal*, right of, to grant perpetual lease—*Bengal Tenancy Act (VIII of 1885)*, ss. 5, 181—*Tenure—Holding—Contract.*—As a general principle, a *ghatwal* is not competent to grant a lease in perpetuity, and his successor is not bound to recognize such an incumbency. *Grant and the Court of Wards v. Bungshee Deo* (1871), 15 W. R., 39, followed. A lease in perpetuity, granted to the plaintiff by defendant No 7, who is a *ghatwal* jointly with the predecessors of the other *ghatwal* defendants, is

GHATWALI TENURE—*concluded.*

inoperative even against defendant No 7, as the lease is one and indivisible. *Held, also*, on the construction of the lease and findings of the lower Appellate Court, that the lease created a tenure and not a rayyati holding. *NARAYAN MULLICK v BADI ROY* (1901)

[6 C. W. N., 94; S.C., I. L. R., 29 Calc., 227]

GIFT.

See **HINDU LAW**—

ADOPTION—WHO MAY OR MAY NOT ADOPT;

[I. L. R., 26 Bom., 491]

GIFT

INHERITANCE—SPECIAL HEIRS—

MALES—HUSBAND, HEIRS OF.

[I. L. R., 28 Calc., 311]

See **LIFE ESTATE** . 5 C. W. N., 569

See **MAHOMEDAN LAW**—

ENDOWMENT;

[I. L. R., 30 Calc., 666]

GIFT

See **SALE IN EXECUTION OF DECREE**—

SETTING ASIDE SALE—GENERAL CASES.

[I. L. R., 28 Mad., 365]

See **WILL**—CONSTRUCTION.

[6 C. W. N., 321]

I. L. R., 28 Bom., 319

—for maintenance—

See **CONTRACT**—CONSTRUCTION OF CONTRACTS . . . I. L. R., 28 I. A., 198

—registration of, after death of donor—

See **REGISTRAR ACT, 1877, s. 17**

[I. L. R., 25 Mad., 672]

—to a class—

See **TRUST** . . . I. L. R., 26 Bom., 449

—Construction of document—*Clause in deed of gift, excluding claims of the donor or his heirs or representatives—A Hindu transferred to his daughter a portion of his immovable property, by an instrument which appeared to be a gift of the same.*

[I. L. R., 23 All., 309]

GOOD FAITH.

See **BONA FIDES.**

GOVERNMENT.

See **ACT OF STATE.**

See **PREROGATIVE OF THE CROWN.**

—appeal by—

See **APPEAL IN CRIMINAL CASES**—ACQUIT-
TALS, APPEALS FROM.

—liability of—

See **SECRETARY OF STATE.**

[I. L. R., 27 Bom., 189]

—Resolution of—

See **SECRETARY OF STATE.**

[I. L. R., 27 Bom., 189]

GOVERNMENT OFFICERS, ACTS OF.

See **SECRETARY OF STATE.**

[I. L. R., 27 Bom., 189]

GOVERNMENT SECURITIES.

—deposit of—

See **LIMITATION ACT, 1877, SCH. II,**
ART. 145 . . . 7 C. W. N., 476

GRANT.

Col.

1. **CONSTRUCTION OF GRANTS** . . . 403

2. **POWER TO GRANT** . . . 401

—by Government—

See **CROWN LANDS**

[I. L. R., 26 Mad., 268]

See **HINDU LAW**—

CUSTOM—IMPARTIBILITY;

[I. L. R., 29 Calc., 828]

INHERITANCE—IMPARTIBLE PRO-
PERTY.

See **RESUMPTION**—EFFECT OF RESUM-
PTION . . . I. L. R., 28 Mad., 339

See **SUCCESSION** . . . I. L. R., 30 I. A., 190

—construction of—

See **LEASE**—CONSTRUCTION.

[I. L. R., 30 Calc., 683]

See **LIFE ESTATE** . . . 5 C. W. N., 569

See **SERVICE TENURE.**

[I. L. R., 28 Mad., 403]

—construction of re-grant—

See **EXTINGUISH, SUFFICIENCY.**

[I. L. R., 23 I. A., 189]

GOOD BEHAVIOUR.

See **SECURITY FOR GOOD BEHAVIOUR.**

GRANT—continued.

1. CONSTRUCTION OF GRANTS.

1.—Construction of a grant for maintenance—Use of the words "proprietors" and "for ever"—Grant for life not extended thereby—An Oudh talukdar, who had inherited an impartible estate descending to a single heir, made a grant of villages for the maintenance of a member of the joint family to which they both belonged. Documentary evidence bearing on the duration of the grant consisted of a *baz-dara*, or deed of relinquishment of claim, executed by the grantee, and of petitions by the grantor for the entry of change of names in the revenue record, with such entry. And relevant facts and circumstances were in evidence. Held that the purpose of the grant, which was for the maintenance of the grantee, was *prima facie* an indication that the grant was intended to be only for his life; and that its true construction was not extended by the use of the words "proprietor" and "for ever" in the documents. On the evidence, the grant was rightly declared estate of inheritance did not extend to be reversed grounds, and

Mautes Abdul Majid v Fatima Bibi, (1865), L. R., 12 I. A., 159, referred to, the principle in that case applying to this *RAMESHAH BAKSHI SINGH v. ANJUN SINGH* (1900)

[I. L. R., 23 All., 194;
S. C., L. R., 28 I. A., 1

2.—Grant, whether for maintenance only or for an estate of inheritance—Intention as shown by documents—Partition by grantees on assumption that grant conferred an hereditary estate—On a question as to whether a grant of lands made in 1844 out of the *samindari* of Nidadavolu to collateral members of the family

the family members had in 1844 made a partition "themselves and in the presence of" and

on an Com Court

held, on the construction of the documents evidencing the grant, and under the circumstances of the case, that it conferred an hereditary estate, and that the title was completed by the partition. *RAJASI HANADIA GARU v. PARTHASARATHI APPA RAU* (1902)

[I. L. R., 26 Mad., 202;
S. C., L. R., 30 I. A., 14

3.—Deeds, interpretation of—Grant by way of lease—"Istemrari mukurari"—Grant for life—Tenure, permanent and hereditary—Grant for maintenance—Impartible Raj—Declaratory suit—Bengal Tenancy Act (VIII of 1885), ss. 106, 107, 109—Limitation Act (XV of 1877), Sec. II, Art. 14—Civil Procedure Code (Act XIV of 1859), s. 375—Registration Act (III of 1877), ss. 17, 49.—A grant was made of certain villages by the proprietor of an impartible Raj to his wife, in istem-

GRANT—concluded.

1. CONSTRUCTION OF GRANTS—concluded.

rari mukurari, at a fixed annual rent, the deed containing the following covenant, "I, the declarant, or my representatives, have and shall have no claim, right or dispute thereto, except the aforesaid reserved rent." Held (1) that the use of the words 'istemrari mukurari' in the lease was not sufficient to create a permanent and hereditary tenure; and (2) that the words excluding the claim of, or right of interference by, the grantor or his representatives did not necessarily import the creation of a permanent and hereditary tenure.

2. POWER TO GRANT.

4.—Darkhast rules—Grants of house-sites—Grant by Tahsildar—Appeal to Divisional officer—Failure to reverse grant—Validity of grant—By the darkhast rules, as amended in 1894, an appeal is provided to a Divisional officer from the orders of a Tahsildar in respect of grants of building-sites. A Tahsildar issued an order granting an application for a building-site, and an appeal was preferred therefrom to the Sub-Collector (the Divisional officer). This officer apparently referred the appeal to the Collector, who passed an order annulling the grant. The Collector's order was sent to the Divisional officer, who communicated it to the Tahsildar. On a suit being instituted by the applicant for a declaration of his title to the land: Held that he had acquired a good title. The appeal lay to the Sub-Collector, who had exercised no discretion with reference to the question which came before him on appeal. He had not dealt with the appeal, or made any order thereon. No authority had been cited to show that, in matters not dealt with by the regulations, the Collector has a revisional power similar to that given to him by the regulations in matters dealt with therein, and that the Collector's order on appeal to the Sub-Collector ought to be regarded as an order made by the Collector in the legal exercise of his revisional powers. The result was that the order of the Tahsildar granting the title had not been legally set aside, and the plaintiff had acquired a good title by virtue of the grant duly made by the Tahsildar. *SAPPANI ASARI v. COLLECTOR OF COIMBATORE* (1903)

[I. L. R., 26 Mad., 743

GRATIFICATION.

—illegal—

See ILLEGAL GRATIFICATION.

GRAVE-YARD.

See MAHOMEDAN LAW—CUSTOM.

[I. L. R., 26 Bom., 193

GRIEVOUS HURT.

See HURT—GRIEVOUS HURT.

GROUND OFS OF APPEAL.

See SPECIAL OR SECOND APPEAL—
 GROUNDS OF APPEAL.

GUARANTEE.

See PARTNERSHIP—

RIGHTS AND LIABILITIES OF PART-
 NERS; . . . 6 C. W. N., 429

SUITS RESPECTING PARTNERSHIPS
 [I. L. R., 23 Bom., 808]

See PRINCIPAL AND AGENT—LIABILITY
 OF PRINCIPAL . . . 6 C. W. N., 429

See RES JUDICATA—CAUSES OF ACTION—
 CONTINUING GUARANTEE
 [I. L. R., 27 Bom., 418]

—Contract Act (IX of 1872), s. 260—Guarantee,
 Surety—Liability of surety to a

sued the defendants on the bond. The way of demurrer to the plaintiff's claim—that no cause of action was shown to exist against the defendants—having been taken: Held that, there being a change in the constitution of the firm before the alleged defalcations took place, the guarantee given by B would be taken as revoked by virtue of s. 260 of the Contract Act; and, the alleged embezzlements having been committed by B while in the service of the new firm of "N. Mookerjee and Son," and not that of N. C. Mookerjee, there was no breach of the conditions of the bond: the objection taken by the defendants must therefore prevail, and the suit be dismissed. *NEL COMTE MOOKERJEE v. BIRMO DASS MOOKERJEE* (1901) . . . I. L. R., 28 Calc., 597

GUARDIAN.

Col.

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[I. L. R., 30 Calc., 613]

GUARDIAN—continued.

See DECLARATORY DECREE, SUIT FOR—
 ADOPTION . . . I. L. R., 30 Calc., 613
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 1890).

See HINDU LAW—GUARDIAN.

See LIMITATION—QUESTION OF LIMITA-
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See LIMITATION ACT, 1877, s. 19—AC-
 KNOWLEDGMENT OF DEBTS
 [I. L. R., 28 Bom., 231]

See LUNATIC.

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See MINOR.

See SUCCESSION CERTIFICATE ACT, s. 6, 7
 AND 8 . . . I. L. R., 25 Bom., 523

—ad litem—

See CIVIL PROCEDURE CODE, s. 103.
 [I. L. R., 24 All., 383]

See LUNATIC . . . I. L. R., 24 Mad., 504

See MINOR—REPRESENTATION OF MINOR
 IN SUITS.

See MORTGAGE—REDEMPTION—MISCEL-
 LANEOUS CASES . . . I. L. R., 27 Bom., 23

—certificated—

See COMPROMISE—COMPROMISE OF SUITS
 UNDER CIVIL PROCEDURE CODE
 [7 C. W. N., 80]

—continuance of parent's guardianship—

See KIDNAPPING, I. L. R., 24 Mad., 284

—non-appearance of—

See CIVIL PROCEDURE CODE, s. 109.
 [5 C. W. N., 58]

—powers of—

See LIMITATION ACT, 1877, s. 20
 [I. L. R., 29 Ca. 647]

1. APPOINTMENT.

1.—Minor—Guardian appointed of property of a minor who was a member of a joint Hindu family, the property being joint property—Succession in a for sale of family property in which a share—Jurisdiction of High Court. general jurisdiction, and apart from the Wards Act (VIII of 1890), the High Co to appoint a guardian of the property is a member of joint Hindu family minor's property ■ an undivided share property. The applicant in this be appointed guardian, also sought Court for a sale of the family ■ minor was interested. *Held*,

GUARDIAN—concluded.**1. APPOINTMENT—concluded.**

circumstances of the case, that the sanction should be given. *In re MANILAL HURGOVAN* (1900)
[I. L. R., 25 Bom., 353]

2. DUTIES AND POWERS OF GUARDIANS.

2.—Guardian and minor—Pre-emption—Refusal of guardian on behalf of minor to claim pre-emption—Minor bound by such refusal.—The guardian of a minor is competent to exercise on behalf of the minor, or to refuse to exercise, a right of pre-emption accruing to the minor, and, if he refuses in good faith and in the interests of the minor, the minor is bound by such refusal. *Lal Bahadur Singh v. Durga Singh* (1881), I. L. R., 3 All., 437, referred to. *UMRAO SINGH v. DALIP SINGH* (1901)
[I. L. R., 23 All., 129]

■ DISQUALIFIED PROPRIETORS.

3.—Act XIX of 1873 (N.-W. P. Land-revenue Act), s. 205B—Attachment of property of disqualified proprietor—Profits accruing after the

accrue after the release of the corpus from the superintendence of the Court of Wards. *Himanchal Singh v. Jhamman Lal* (1900), I. L. R., 22 All., 364, referred to. *JHAMMAN LAL v. HIMANCHAL SINGH* (1901) . . . I. L. R., 24 All., 136

GUARDIANS AND WARDS ACT (VIII OF 1890).

See GUARDIAN.

See MINOR—CUSTODY OF MINORS.

[I. L. R., 25 Bom., 574]

—ss. 7, 11, 13, and 46—

GUARDIANS AND WARDS ACT (VIII OF 1890)—concluded.

—ss. 29, 30—

See MINOR—LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS.

[I. L. R., 23 All., 288]

25 All., 59

—ss. 34, 41—

Court, as representing the interest of the minor, certain summary powers for the protection of his property during minority. S. 41 cannot be construed into giving the Court, by summary procedure, a power to order accounts to be rendered after the termination of guardianship. *NABU BEPARI v. SHEIKH MAHOMED* (1900) . . . C. W. N., 207

—s. 46—

See ante, ss. 7, 11, 13 AND 48

—ss. 47, 48—

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE.

[I. L. R., 30 Calc., 613]

GUJARAT TALUKDARS' ACT (BOM. ACT VI OF 1888).

—s. 2 (a)—*Talukdar—Purchaser from "talukdar"*—Definition—The term "talukdar," as defined by s. 2 (a) of the Gujarat Talukdars' Act (Bombay Act VI of 1888), does not include a purchaser of a talukdar's share sold in execution of a decree passed against him. *NABANDAS PARBHUDAS v. PARSHOTAM VALU* (1902) . . . I. L. R., 26 Bom., 757

H**HABEAS CORPUS, WRIT OF.**

—Right of appeal from order refusing to issue writ of habeas corpus—Judgment not being order passed in criminal trial—Powers of High Court hearing references under s. 307 of the Criminal Procedure Code—Jurisdiction to commit European to jail—Letters Patent, 1565, cl. 15, 25, 26, 27, 28—Code of Criminal Procedure (Act V of 1893), ss. 307, 333, 491 and 496—Prisoners

as well as civil cases, and that an order of a single Judge of the High Court made in the exercise of its ordinary original criminal jurisdiction, refusing an application by a prisoner under ss. 490 and 491 of the Code of Criminal Procedure for release from alleged illegal custody under a sentence of imprisonment passed by a Divisional Bench of the Court, is a "judgment not being a sentence or order passed or

HABEAS CORPUS, WRIT OF—concluded.

made in any criminal trial," within the terms of cl. 15 of the Letters Patent, and that an appeal lies from such order to the High Court. *Held*, further, that the jurisdiction which the High Court exercises in hearing a case submitted to it under s. 307 of the Criminal Procedure Code is not the criminal jurisdiction.

s.c., 6 C. W. N., 254

HACKNEY-CARRIAGE.

—keeping horses for, without license—

See BENGAL MUNICIPAL ACT (III OF 1854), s. 263, 273. 5 C. W. N., 331

HACKNEY-CARRIAGE ACT (BOM. ACT VI OF 1883).

—s. 6—License—License of public conveyance

be exercised after he has made proper application with the conveyance to be licensed and has considered

577 of the High Court rules, all applications under s. 45 of the Specific Relief Act (I of 1877) should be made by motion, and not by petition. *GILL v. TATA NOON*, (1903). I. L. R., 27 Bom., 307

HANDWRITING.

See LIMITATION ACT, 1877, s. 30
[I. L. R., 26 Bom., 316]

HAQ.

See ZAMINDAR, RIGHTS OF.
[I. L. R., 23 All., 209]

HARBOURING OFFENDER.

See PENAL CODE, s. 216B.
[I. L. R., 25 All., 261]

HATS.

See SPECIFIC RELIEF ACT (I OF 1877), s. 3.
[I. L. R., 29 Calc., 614]

HEIR.

See HINDU LAW—

ADIVISION—ALIENATION BY
WIDOW—ALIENATION FOR LEGAL
NECESSITY OR WITH CONSENT
OF HEIRS OR REVERSIONERS;
INHERITANCE—SPECIAL HEIRS.

—bequest to—

See MAHOMEDAN LAW—INHERITANCE
[I. L. R., 30 Calc., 683]

HEREDITARY OFFICE.

—Form of suit—Two persons joined in a suit, and claimed the offices of karnam and shroff as being hereditary. The offices formed portions of a permanently-settled estate of which first defendant was proprietor. The second defendant was alleged to have possession of the offices, the second plaintiff, who had the titular right to them, being thus wrongly kept out. *Held* that it was not necessary that the suit should have been brought for a declaration, there being no doubt as to the second plaintiff's title; and that it was properly brought for possession. *SADASIVA PILLAI v. KALAPPA MUDALIAR* (1900). I. L. R., 24 Mad., 39

HEREDITARY OFFICES ACT (BOM. ACT III OF 1874).

See HINDU LAW—ADOPTION—WHO MAY
OR MAY NOT BE ADOPTED.
[I. L. R., 27 Bom., 75]

—ss. 4 and 5—*Fatan*—*Fatan* in Gujarat—*Service Commutation settlement*—*Intestates*—*Succession to a *ratna**—*Succession through females*—*Bombay Act III of 1874, s. 8, as amended by ss. 1 and 2 of Bombay Act I of 1886*—*Alienation of *ratna**—A *ratna* in Gujarat does not cease to be *ratna* property, as defined by s. 4 of Bombay Act III of 1874, merely because a service commutation settlement has been effected. Such a settlement does not change the nature of the property simply because service is not demanded. As far as the power of alienation is concerned, if it is granted by the settlement, it cannot be taken away by the change introduced in s. 5 of Bombay Act III of 1874 by s. 1 of Bombay Act V of 1886. S. 2 of Bombay Act V of 1886 (which amends s. 5 of Bombay Act III of 1874) gives a preference to male members of the *ratna* family over persons claiming through females. *Held* that the section applies to *ratnas* in Gujarat, even though the services originally appertaining to such *ratnas* had ceased to be demanded. One *Niamatral* was a *ratnadar* in Gujarat. He died in 1844, leaving behind him a widow, a daughter, and a separated brother. His property consisted of certain *possessio* lands and a cash allowance attached to his *ratna*. In 1873 the Government effected a service

HEREDITARY OFFICES ACT (BOMBAY ACT III OF 1874)—concluded.

sual to establish their title as heirs to the *watan* property as against the defendants, who were the son's sons of Niamatral's separated brother. Held that, under s 2 of Bombay Act V of 1886, plaintiffs, as claiming through a female, were not entitled to Niamatral's *watan* property in preference to the defendants, who were male members of the deceased *satandar*'s family. *BAI JADAT v. NARSIMAL* (1900) [I. L. R., 25 Bom., 470]

—s. 18—*Fatan*—Suit for a declaration of right to a share in a *watan*, and to participate in the emoluments of the *watan*—Jurisdiction of the Civil Court to entertain such suit—Jurisdiction—Where the plaintiffs sued to obtain a declaration that they were entitled to a third share in a *Mahdrki watan*, and to participate in the profits of the *watan*: Held that, under s 18 of Bombay Act III of 1874, the Civil Court had no jurisdiction to make the declaration sought. *Parsha v. Lagmya* (1893), I. L. E., 13 Bom., 83, followed. *BHIVA v. VITHA* (1900). I. L. R., 25 Bom., 186

HEREDITARY OFFICES (AMENDMENT) ACT (BOMBAY ACT V OF 1886).

—ss. 1, 2—

See HEREDITARY OFFICES ACT (BOMBAY ACT III OF 1874), ss. 4, 5.
[I. L. R., 25 Bom., 470]

HIGH COURT.

—power of Coroner to commit to—

See CORONER. 7 C. W. N., 889

—reference to—

See REFERENCE TO HIGH COURT—
CIVIL CASES;
CRIMINAL CASES.

See SMALL CAUSE COURT—PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT.

—Calcutta—

See RULES OF HIGH COURT, CALCUTTA.

HIGH COURT, JURISDICTION OF.

1. CALCUTTA—

CIVIL 412

2. MADRAS—

CIVIL 413

3. BOMBAY—

CRIMINAL "

HIGH COURT, JURISDICTION OF— continued.

See APPEAL—NORTH-WESTERN PROVINCES ACTS.

[I. L. R., 25 All., 141]

See FIRST OFFENDERS.

[I. L. R., 24 All., 308]

See GUARDIAN—APPOINTMENT.

[I. L. R., 25 Bom., 353]

See LETTERS OF ADMINISTRATION.

[I. L. R., 24 Mad., 120]

See PROBATE—

POWER OF HIGH COURT TO GRANT;
OPPOSITION TO, AND REVOCATION
OF, GRANT. 5 C. W. N., 377

See REVISION.

See RIGHT OF SUIT—FRAUD.

[7 C. W. N., 353]

See SUPERINTENDENCE OF HIGH COURT.

See TRANSFER OF CIVIL CASE.

See TRANSFER OF CRIMINAL CASE.

See WARRANT OF ARREST—CIVIL CASES.

[I. L. R., 28 Mad., 120]

—in Kumaon and Garhwal—

See LEGAL PRACTITIONERS ACT, ss. 6 AND 8.

[I. L. R., 24 All., 348]

—to hear appeal—

See MADRAS GENERAL CLAUSES ACT, s. 8.

[I. L. R., 24 Mad., 39]

—to inquire into validity of Acts of local Councils—

See BOMBAY CITY IMPROVEMENT ACT.

[I. L. R., 27 Bom., 424]

—Calcutta, Criminal—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE.

[I. L. R., 28 Calc., 446]

See REFORMATORY SCHOOLS ACT, ss. 8, 16.

[I. L. R., 28 Calc., 423]

1. CALCUTTA.

CIVIL.

1.—Original jurisdiction—High Court—Fraud—Decree—Mofussil Court—Letters Patent, 1563, of 1893), jurisdiction and ss. 11—
to set aside a decree of a Mofussil Court on the ground of fraud. *Bandon v. Becher* (1835), 3 Cl. and Fin., 479; *Queen v. Saddlers Company* (1863), 10 H. L. C., 404; *Rajib Panda v. Lakhan Senda Mahapatra* (1899), I. L. R., 27 Calc., 11, 16; *Prasanna Moy v. Kadambini Dasi* (1863).

HIGH COURT, JURISDICTION OF—
*concluded***1. CALCUTTA—concluded****CIVIL—concluded**

3 B. L. R. (O. C.), 83, *Moxon v Payne* (1873),
I. E., 8 Ch. App., 891, referred to. *NISTARINI*
DASSI v. NUNDO LAL BOSE (1902)

[I. L. R., 30 Calc., 389]

2.—*Jurisdiction—Presidency Group—Bench*
taking up cases of the Presidency Group, whether
it has jurisdiction to set aside decrees of the
Presidency Small Cause Court—Presidency Small
Cause Courts Act (XV of 1882, as amended by
Act I of 1895)—Rules of the Appellate Side of
the High Court, Rule II, Chapter III, column 1.
—The Bench taking cases of the Presidency Group
has no jurisdiction over the Court of Small Causes
at Calcutta, and it has no power to set aside the
decrees of the said Court. *SHAMSHER MUNDUL v.*
GANENDRA NARAIN MITTAL (1902)

[I. L. R., 29 Calc., 498]

2 MADRAS.**CIVIL.**

capatam—demole, that the standing upon or over of
the land is not the same as the land itself

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3 BOMBAY.**CRIMINAL.**

4.—*Jurisdiction—Scheduled Districts—Exer-*
cise and appeal in a criminal case from the Sched-
uled Districts—Act XI of 1846—Scheduled
Districts Act (XIV of 1873)—The Collector of
the District is not a Magistrate for the

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HIGH COURT, POWER OF—

See POSSESSION, ORDER OF CRIMINAL
COURT AS TO—LIKELIHOOD OF BREACH
OF THE PEACE. I. L. R., 28 Calc., 418

See REVISION.

See SUPERINTENDENCE OF HIGH COURT

See TRANSFER OF CIVIL CASE.

See TRANSFER OF CRIMINAL CASES.

See VERDICT OF JURY—POWER TO INTER-
FERE WITH VERDICTS.

HIGH COURTS' CHARTER ACT (24 & 25
VICT., c. 104).**—s. 11—**

See WARRANT OF ARREST—CIVIL CASES.

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—s. 15—

See POSSESSION, ORDER OF CRIMINAL
COURT AS TO—LIKELIHOOD OF BREACH
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HINDU LAW.

See CONVERTS. I. L. R., 25 All., 548

—interpretation of—

See OUDH ESTATES ACT (I of 1869).

[5 C. W. N., 602]

—reversion of infant to Hinduism—

See HINDU LAW—ADOPTION—EVIDENCE
OF ADOPTION.

[I. L. R., 30 Calc., 999]

HINDU LAW—ADOPTION.**1. REQUISITES FOR ADOPTION—**

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3. WHO MAY OR MAY NOT BE ADOPTED 419

4. EFFECT OF ADOPTION 419

5. EVIDENCE OF ADOPTION 420

See ADMINISTRATION. 5 C. W. N., 162

See HINDU LAW—WILL—CONSTRUCTION
OF WILLS—ADOPTION.

See LIMITATION ACT, 1977, SCH. II—

ART. 118; I. L. R., 25 Bom., 28

" 27 Bom., 614

ART. 119; I. L. R., 24 All., 195

" 26 Bom., 720

ARTS. 112, 119 AND 121

[I. L. R., 28 Mad., 291

HINDU LAW—ADOPTION—continued.

—effect of adoption—

See HINDU LAW—WIDOW—POWER OF DISPOSITION ON ALIENATION.

[I. L. R., 26 Mad., 143]

—who may or may not be adopted—

See HINDU LAW—ADOPTION—EVIDENCE OF ADOPTION. I. L. R., 30 Calc., 899

1. REQUISITES FOR ADOPTION.**AUTHORITY.**

1.—Consent of sapinda—Adoption by widow
 —Consent of sapinda—Exercise of discretion—
 Effect of representation by widow that her husband
 had given authority, when none had in fact been
 given—Effect of asking consent of one of two
 sapindas of equal degree—Where a widow obtains the

tion that the adoption was invalid, it was argued
 that, though the assent of the other sapinda had

discharged her duty because, in her opinion, such an
 application would have been made in vain. The
 object of enjoining a widow to seek and act under
 the guidance of her husband's sapindas would be

and refusing to give his assent to her adopting a
 stranger or a distant sapinda, if there be no reason-
 able objection to the adoption of his own son. In

HINDU LAW—ADOPTION—continued.**1. REQUISITES FOR ADOPTION—concluded.****AUTHORITY—concluded.**

the case of an undivided family, it may be that the
 assent of the senior sapinda, having the status of
 managing member, will be equivalent to the assent of
 the family, and it has
 been held that when
 a widow obtains the

[I. L. R., 26 Mad., 627]

2.—Authority of husband to
 his wife to adopt—Adoption in pursuance of
 it—Death of son so adopted—Subsequent adop-
 tion by widow with assent of some sapindas—

Held that the husband's authority was not exhausted
 by the first adoption, and held good for the second

which was not acted on for nine years, during which
 period circumstances materially changed, the assent
 so given would not be valid. *SURYANABAYANA v.*
VENKATARAMANA (1903)

[I. L. R., 26 Mad., 681]

3.—Convert—Gift of a son in adoption by a
 Hindu convert to Mahomedanism—Validity of

adoption ceremony is necessary. Plaintiff, a

4.—Widow—Power of widow to give a son in
 adoption—Authority to give in adoption.—Accord-

Bhagirathibai (1877), I. L. R., 3 Bom., 377, distin-
 guished. *JOHNS CHANDRA BANERJEE v.*
SRITAKALI DESI (1903)

[I. L. R., 30 Calc., 985;
a.c., 7 C. W. N., 871]

HINDU LAW—ADOPTION—continued.**WHO MAY OR MAY NOT BE ADOPTED—concluded.**

family) who can be legally adopted, will be granted by Government to the *tatan* on the payment from that time forward in perpetuity of an annual *nazrana* of one anna in each rupee of the above total emoluments of the *tatan*. It was contended that the adoption of a person who did not belong to the *tatandar* family, in respect to whose *tatan* the said anna was granted, was invalid. *Held* that the anna did not prohibit such an adoption, and that the adoption in question was valid. **BALAJI RAMCHANDRA DESHPANDE v. DATTO RAMCHANDRA (1903)** [I. L. R., 27 Bom., 75]

4. EFFECT OF ADOPTION.**12.—Impartible estate—Rights of natural**

son's was the last, on his death, first defendant enjoyed the estate. Plaintiff now sued for a declaration that he was entitled to the estate as reversioner, in preference to a senior brother of the first defendant, basing his claim principally on the ground that he was the natural father of N. *Held* that this relationship did not entitle plaintiff to claim as reversionary heir. In determining the degree of propinquity to the deceased adopted son, in his adoptive family in which the

Ayyangar, I. L. R., 130, 1308. As to whether such natural relationship would be efficacious to intercept an escheat to the Crown—*quære*. **MUTHAYYA RAJAGOPALA THEVAR v. MINAKSHI SUNDARA NACHAR (1901)**

[I. L. R., 25 Mad., 394]

13.—Successive adoptions—Hindu widow—Adoption of a second son after death of first, whether it divests the mother's estate—Right of**HINDU LAW—ADOPTION—concluded.****4. EFFECT OF ADOPTION—concluded.**

(1872), 18 W. R., 359; *Jamnabai v. Ruy Chand Nahai Chand (1883)*, I. L. R., 7 Bom., 225; and *Bajji Vinayakrav Jaggannath Shankarsett v. Lakshmidas (1887)*, I. L. R., 11 Bom., 331, considered. **RAI JATINDRA NATH CHAUDHURI v. AMRITA LAL BAGCHI (1900)** . 5 C. W. N., 20

5. EVIDENCE OF ADOPTION.

14.—Adoption, validity of—Son of a Brahmo, adoption of—Onus of proof—Incapacity—Brahmo Samaj—Evidence taken on commission, reference

principles of Hindu law. Evidence taken on commission, until tendered and admitted as evidence in the suit, cannot be made use of by either party. *Nistareni Dassee v. Nundo Lall Bose (1899)*, 8 W. R., 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

a member of the Brahmo Samaj, *held*

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- ENDOWMENT—ALIENATION OF ENDOWED PROPERTY;**
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See **HINDU LAW—****STRIDHAN—DESCRIPTION AND DEVOLUTION OF STRIDHAN;**[**I. L. R.**, 25 All., 476**WILL—CONSTRUCTION OF WILLS;**[**I. L. R.**, 28 Calc., 499**WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION.****1. ALIENATION BY FATHER.**

1.—Rights of minor son—Letters Patent—Transfer of Property Act (IV of 1882), s. 85—Mitakshara—Mortgage—Karta—Decree—Statutes, interpretation of—Notice—Civil Procedure Code (Act XIV of 1882), ss. 437, 476—Joinder of parties—Redemption—In a joint Mitakshara family, consisting of a father and a minor son, the father, as karta of the family, by a mortgage bond hypothecated the joint property. The mortgagee sued the father alone, on the mortgage bond, without making the minor son a party, although he (the mortgagee) had notice of the son's interest in the mortgaged property at the time. The mortgage-debt was not found to have been contracted for illegal or immoral purposes. *Held* [dissenting from the judgment of GOSZ, J., and affirming that of HARRINGTON, J., in *Lala Surja Prasad v. Golab Chand* (1900), **I. L. R., 27 Calc., 724] that, the provisions of s. 85 of the Transfer of Property Act**

HINDU LAW—ALIENATION—continued.**1. ALIENATION BY FATHER—continued**

2.—Contract by father to sell ancestral property—Specific performance of such contract—Circumstances justifying sale—Debts of father—Burden of proof of justifying circumstances—Transfer of Property Act (IV of 1882), s. 81—By a written agreement dated 9th

sell the entirety of the family property so as to pass even his son's interest therein, but in this case there was no evidence of debts that justified the sale. It lies on him who seeks to bind the infant to prove justifying circumstances, and this the plaintiff had failed to do. The principle laid down by s. 34 of the Transfer of Property Act (IV of 1882) has no

3.—Rights of son—Mitakshara—Joint Hindu family—Mortgage by father—Suit for sale

sued the mortgagee for a declaration that his share was not bound by the decree, first, because he was not made a party to the mortgagee's suit for sale, and, secondly, because the mortgage-debt was contracted by his father for immoral or impious purposes. It was found in that suit that the mortgagees had at least constructive notice of the son's existence, and ought to have made him a party to their suit for sale. But it was also found in the son's suit that the original mortgage-debt of the father was not contracted for immoral or impious purposes. *Held* that, although the son might have been entitled to the decree sought by him, had he contented himself with raising the first plea only, yet, inasmuch as he himself had raised the issue of the immorality of the debt, which had been found against him, and as that was the only issue which could in any subsequent suit be raised as between himself and the mortgagee, he was not in the

HINDU LAW—ALIENATION—continued.**1. ALIENATION BY FATHER—continued**

*Singh v. Raja Ram (1882), I. M. R., & All., 235,
referred to. KANHAI LAL v. RAJ BAHADUR (1898)
[I. L. R., 24 All., 211]*

4.—Self-acquired property—Bequest of self-acquired property by a testator to his sons—Intention expressed by will that property should be

Validity of alienations—Property having quality

made voluntary gifts of certain property to the defendant after the date of plaintiff's birth. Plaintiff now sued to set these alienations aside, and to recover the property, one ground being that the property

property in question had been self-acquired, originally, by plaintiff's paternal grandfather, who had disposed of it by will to his three sons, of whom plaintiff's father was one. Plaintiff, however, contended that, notwithstanding this fact, the property had the quality of ancestral property in his father's hands. From the terms of the will it appeared that the testator intended his sons to take the property in severalty, but in other respects the dispositions contained in the will were consistent with the ordinary rules of inheritance under the Hindu

HINDU LAW—ALIENATION—continued.**1. ALIENATION BY FATHER—continued.**

law. There were no words in the will indicating any intention that the sons should hold their shares free from the incidents of ancestral property. *Held* that plaintiff was entitled to recover. *NAGALINGAM PILLAI v. RAMACHANDRA TEVAR (1901)*
[I. L. R., 24 Mad., 429]

2. ALIENATION BY MOTHER.

5.—Minor—Guardian—Adopted son—Sale by adoptive mother—Suit by son to set aside sale—Purchase money paid by vendee to mother not

but as the debts of the mother, who claimed adversely to her son *NATHU PIRAJI MAHWADI v. BALWANTRAO BIN YESHWANTRAO (1903)*

[I. L. R., 27 Bom., 390]

3. ALIENATION BY WIDOW.

(a) ALIENATION FOR LEGAL NECESSITY, OR WITH CONSENT OF HEIRS OR REVERSIONERS

6.—Consent of reversioner—Alienation by widow of land inherited from her husband—Reversioner—Consent of reversioner to alienation—Subsequent claim by son of consenting reversioner

unable to pay the Government assessment. The plaintiff was the son of Venkatesh, and was born after these transactions. After the sale and relinquish-

ment,

1897

reversion-

er's son,

plaintiff,

HINDU LAW—ALIENATION—continued.**3. ALIENATION BY WIDOW—continued**

- (a) ALIENATION FOR LEGAL NECESSITY, OR WITH CONSENT OF HEIRS OR REVERSIONERS—concluded.

plaintiff's father, who was at the time the only male reversioner in existence, validated the sale. As to the remaining three plots (Nos 497, 498 and 499), the plaintiff was entitled to recover them. There was no consent given, or legal necessity for their alienation proved. **VINAYAK VITHAL BHARGE v. GOVIND VENKATESH BULKARNI (1900)**

(I. L. R., 25 Bom., 128)

7. ———— *Lease by a widow—Consent of next female reversioner, how far binding on next male reversioner—Ratification—Where a Hindu widow, with the consent of the next female*

8.—*Duty of alienee—Alienation for legal necessity—Duty of person advancing money to Hindu widow—Burden of proof—If a mortgagee*

BADITA LAL (1902). . I. L. R., 24 All., 547

(b) WHAT CONSTITUTES LEGAL NECESSITY.

9.—*Legal necessity—Mortgage by widow—Loan, raising of.*—A Hindu widow, with other persons, was interested in an estate as the representative of her deceased husband. In order to meet the expenses incidental to the defence of criminal proceedings brought by a tenant alleging that his landlords had forged a *khawajga*, the lady, with her co-sharers, raised a loan on a promissory note. Her property was sold in execution of a decree for the money. In order to have the sale set aside, she exe-

HINDU LAW—ALIENATION—concluded.**3. ALIENATION BY WIDOW—concluded.**

- (b) WHAT CONSTITUTES LEGAL NECESSITY—concluded.

necessity **NOBIN CHANDRA HAUDHURI v. KHERODE NATH SAE (1902)** . . . 6 C. W. N., 648

(c) SETTING ASIDE ALIENATIONS, AND WASTE.

10.—*Reversioners—Specific Relief Act (I of 1877), s. 42—Suit to set aside a mortgage—Reversionary heirs—Dispute as to nearer heir—Mortgage for a small amount which might be repaid by widow—Maintainability of suit—Declaration in a dismissed suit—Where a Hindu widow mort-*

nearer reversionary heirs are, is premature, and is not maintainable. A Civil Court has ample discretion, under s. 42 of the Specific Relief Act, to exercise jurisdiction vested in it, and to decline to set aside,

11.———— *Sale by widow of deceased*

(1903) . . . I. L. R., 25 All., 550

HINDU LAW—CONTRACT.**1. PROMISSORY NOTE.**

—*Suit on promissory note executed by mother of a minor, as his guardian, in respect of a debt for which the minor's share in the ancestral estate was liable—Liability of minor to the extent of his share in the ancestral estate—The mother of a minor executed, as his guardian, a promissory note in respect of a debt for which the son's share in the ancestral estate was liable at the time. On a suit being brought against the minor on the note: Held that the defendant was liable on the note, to the*

HINDU LAW—CONTRACT—concluded.**1. PROMISSORY NOTE—concluded.**

extent of his share in the ancestral estate. *Bachubai v. Shamji Jadavji*, 1 L. R., 9 Bom., 551, and *Indur Chunder Singh v. Radhakishore Ghose*, 1 L. R., 19 Calc., 507, distinguished. *SUBRAMANTA AYYAR v. ARUNUGA CHETTY* (1902) (1 L. R., 26 Mad., 330)

2. TRANSFER OF PROPERTY.

See LEASE—CONSTRUCTION.

(1 L. R., 28 Calc., 720)

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See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT ADOPT

(1 L. R., 27 Bom., 492)

See also the PARTICULAR HEAD OF HINDU LAW WHICH IS APPLICABLE.

See MALABAR LAW—CUSTOM.

—inheritance and succession—

See LETTERS OF ADMINISTRATION.

(1 L. R., 28 Calc., 608)

1. IMPARTIBILITY.

1.—*Impartible Raj—Custom—Onus of proof—Raj seized by Government—Subsequent re-grant to heir of females—partible Raj* out of the country for acts of rebellion, and placed it under the management of their officers. Subsequently they effected a division of the Raj estate, re-instating in one portion of it the heir of the former holder, and granting the other portion to members of another branch of the same family. Held that the re-instatement must, under the circumstances, be treated as proceeding from the grace and favour of the Government in the exercise of their sovereign authority, and the portion restored became thenceforth the separate self-acquired property of the heir, though with all the incidents of the family tenure of the old estate as an impartible Raj. *Beer Pertab Sahas v. Rajender Pertab Sahas* (1867), Moore's I. A. I., followed. There is no inconsistency between a custom of impartibility and the right of females to inherit; and the general law must prevail, unless it is proved that the custom extends to the exclusion of females. The onus of proving

HINDU LAW—CUSTOM—continued.**1. IMPARTIBILITY—concluded.**

that they are excluded lies on the party alleging it. *RAM NUNDUN SINGH v. JANKI KOER* (1902)

(1 L. R., 29 Calc., 828;

s.c., 7 C. W. N., 57;

L. R., 29 I. A., 178)

2. INHERITANCE AND SUCCESSION.

2.—*Mitakshara and Mayukha Schools of Hindu law—Proof of family custom at variance with Hindu Law—Governing law of migrating*

without reference to their nearness to the common ancestor, was held by the Judicial Committee not to be proved by four instances of the custom of

3. PRIMOGENITURE.

3.—*Mitakshara family—Debt of father—Liability of son*—Where the right of primogeniture exists in a *Mitakshara* family, the son who takes the estate by descent by virtue of that right does not

Rao Bahadur v. Court of Wards and Venkata Kumari Mahipati Surya Rao (1899), 8 C. W. N., 416, followed. *RAM DAS MAHWARI v. TEKAIT BRAJA BEHARI SINGH* (1902) (1 C. W. N., 879)

4.—Proof of custom—Lineal primogeniture

by the High Court—(a) oral evidence to show that it was well understood in the family and in families belonging to the same group that no descendant of a younger branch could take until all the elder

succession was lineal primogeniture, and which, among ed in that so in er of seniority with titles denoting precedence, which

HINDU LAW—CUSTOM—concluded.**■ PRIMOGENITURE—concluded.**

would naturally be attached to the lines of descent traced from them *Held* that the custom was proved. **MORISH CHENDER DHAL v SATYUGHAN DHAL** (1901-1902) . I. L. R., 20 Calc., 343;
[s.c., 11 C. W. N., 459; I. L. R., 29 I. A., 62]

HINDU LAW—DEBTS.

See CONTRIBUTION, SCIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR
[I. L. R., 28 Mad., 686]

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.
[6 C. W. N., 223]

See HINDU LAW—

ALIENATION;

CUSTOM—PRIMOGENITURE;

[6 C. W. N., 879]

JOINT FAMILY—

DEBTS AND JOINT FAMILY BUSINESS;

POWERS OF ALIENATION BY MEMBERS—MANAGER.

[6 C. W. N., 429]

See INSOLVENT ACT, ss 7 AND 30.

[I. L. R., 26 Mad., 214]

See REPRESENTATIVE OF DECEASED PERSON.

1.—**Liability for debts—Widow carrying on business of husband—Death of widow—Liability of reversioners to trade debts properly incurred.**—Trade debts properly incurred by a Hindu widow, on the credit of the assets of the business to which she has succeeded as the heiress of her deceased husband, are recoverable, after her death, out of the assets of the business, as against the reversioners who have succeeded thereto, even in the absence of a specific charge. **SAKRASHAI NATHUBHAI v MAGARLAL MULCHAND** (1901) . I. L. R., 26 Bom., 206

2. ————— **Mistakshara joint family**

HINDU LAW—ENDOWMENT.

Col.

1. DEALING WITH, AND MANAGEMENT OF, ENDOWMENT 430
- 2 SUCCESSION IN MANAGEMENT 431
- 3 ALIENATION OF ENDOWED PROPERTY „

See COMPART—TRANSFER OF SHARES, AND RIGHTS OF TRANSFEREES
[I. L. R., 28 Mad., 79]

See ENDOWMENT . I. L. R., 28 Mad., 31

See LIMITATION ACT, 1817, SCH. II, ARTS 120 AND 144 . I. L. R., 28 Mad., 118

See MALABAR LAW—ENDOWMENT.

—alienation of endowed property—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—OFFERINGS TO HINDU DEITY.
[I. L. R., 28 Calc., 470]

1. DEALING WITH, AND MANAGEMENT OF, ENDOWMENT.

1.—*Shebait, suit by, for recovery of advances*

Idole and dedicated certain properties for their worship, etc., and prescribed a certain order in which his descendants were to become *shebait*. When the office of *shebait* devolved upon plaintiff's father *B*, he was kept out of possession by defendant *P* of a portion of the *debutter* estate; and, in a suit by *B* against *P* and certain other persons, *B* having died during the pendency of the suit, a decree was passed, declaring the properties in dispute to be *debutter*, declaring that *B* was entitled to be *shebait*. *B* had to advance money out of his own estate to meet the expenses of the *debutter* estate. The plaintiffs brought the present suit, as heirs and legal representatives of *B*, for recovery of the said money, as also for money realised by *P* out of the *debutter* estate. The plaint stated that, as it was not certain who amongst the defendants was entitled to be *shebait*, all of them were made parties, but the Court was not asked to determine who was entitled to be *shebait*. *Held* that the plaintiffs, as creditors of the *debutter* estate, were not entitled to recover the

HINDU LAW—ENDOWMENT—continued.**1. DEALING WITH, AND MANAGEMENT OF, ENDOWMENT—concluded.**

was entitled to represent the estate as *shebait*, and the plaintiffs had not asked for the determination of the question as to who was the *shebait* for the time being. **PEARL MOHAN MUKHERJEE v. NARENDRA KRISHNA MUKHERJEE (1900)** . . . 5 C. W. N., 273

2 SUCCESSION IN MANAGEMENT.

2.—Succession to Managership—Chela, right of, to succeed ascetic or sanyasi—

Gir v. Umroo Gir (1907), 1 S. D. A., 291, **Mahanth Ramnath Dass v. Mahanth Debroy Dass**, 6 S. D. A., 262; **Mohunt Shro. Prakash Dass v. . . .**

succession to the trust by an act of his own, in connexion with the status under which he originally acquired the trust. **Mohunt Ramnath Dass v. Mahanth Ashbul Dass (1884)**, 1 W. R., 160, and **Rup Narain Singh v. Junko Bye (1878)**, 3 C. L. R., 112, referred to. One J, who was the *mahanth* of a religious institution known as the Barhampore

... was of the ... id been his ... *mahanth* ... him as his ... *mahanthship*, executed an *ekranama* in favour of the *mahanth* of Mirzapur, giving him the right of naming or appointing his own successor. Held that the mode of

HINDU LAW—ENDOWMENT—concluded.**3. ALIENATION OF ENDOWED PROPERTY—concluded.**

decree, sold in execution thereof the *debutter* property. Plaintiff, in his capacity of *shebait*, brought the present suit to set aside the sale. Held by MACLEAN, C.J. (agreeing with RAMPINI, J.), that the trust property could not be sold in execution in the previous suit, as the decree was against the present plaintiff personally. Also that a 244 of the Civil Procedure Code was no bar to the present suit, inasmuch as it was brought by the *shebait* to set

MAHAPATRA v. MOHUNT PADMA CHARAN DEB GOSWAMI (1902) . . . 11 C. W. N., 663

4.—Endowed property—Powers of alienation possessed by manager of endowed property—Held that, with the exception of cases which come under the operation of Bombay Act II of 1863, there is no absolute prohibition against the alienation of endowed property by the manager for the time being; but, for the necessary

HINDU LAW—GIFT.

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See HINDU LAW—

JOINT FAMILY—NATURE OF, AND INTEREST IN, PROPERTY;

[8 C. W. N., 651]

MAINTENANCE—RIGHT TO MAINTENANCE—CONSTRUCTIVE;

[I. L. R., 26 Bom., 163]

WILL—CONSTRUCTION OF WILLS.

■ ALIENATION OF ENDOWED PROPERTY.

3.—Power of alienation—Shebait—Suit to set aside execution sale—Right of suit—Civil Procedure Code (Act XIV of 1882), s. 244—Necessity, absolute and legal—Diog.—Plaintiff, who was the *shebait* of an idol, borrowed in his personal capacity a certain sum of money from defendant. It was recited in the bond, and found by the Courts below, that the money was required to pay a personal debt, and for supplying the idol with *diog*. Defendant, having obtained a money-

HINDU LAW—GIFT—continued.

—construction of gifts; additions to ornaments, made subsequent to marriage—

See **HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES**

[I. L. R., 28 Calc., 311]

1 REQUISITES FOR GIFT

1.—*Act IV of 1852 (Transfer of Property Act), s. 123—Gift—Transfer of possession not necessary when gift of immovable property registered—Act I of 1872 (Indian Evidence Act), s. 111—Gift to an agent—Undue influence—Mental capacity of donor.—Held that, assuming that delivery of possession was essential under the Hindu law to complete a gift of immovable property, that law has been abrogated, by s. 123 of the Transfer of Property Act, in cases where the instrument of gift has to be registered. *Dharmadas Das v. Nistarini Das (1897)*, I. L. R., 14 Calc., 446, followed. *Held*, also, that there is nothing to prevent an agent from being the object of the bounty of his principal. If an agent can clearly show that a gift was made in his favour, by a donor who was in a position to exercise a free and unfettered judgment with full knowledge of what he was doing, the gift will be upheld. *PRIT CHAND v. LAKSHI (1903)*. I. L. R., 25 All., 358*

2 POWER TO MAKE AND ACCEPT GIFTS

2.—*Donor not in possession—Donee not placed in possession—Gift of an undivided share—*

was kept joint and was applied to the maintenance of their mother during her lifetime. It remained in the possession of the plaintiff's father, who was the eldest of the family. The mother died in 1877,

as already stated, in possession, and they did not deliver possession of their shares to the plaintiff or to anyone on his behalf. The plaintiff's father (their co-sharer) was in possession, and he continued in possession after the gift was made. The plaintiff was at that time, and until 1892, a minor, and lived

chased by one Kirpasankar Ranchhor. In 1893 the plaintiff attained his majority, and on the 2d January, 1899, he filed this suit against his father

HINDU LAW—GIFT—continued.

2. POWER TO MAKE AND ACCEPT GIFTS—concluded.

rejected the plaintiff's claim on the ground that the gift to the plaintiff by M and J of their undivided shares of land not in their possession, and of which

adverse possession since the 1st January, 1887, i. e., more than twelve years. On appeal to the High Court, 1892, January 18th, the judgment was reversed.

necessary, and by the registered deed of gift had done all that they could do, and the possession of the father was practically the only mode in which the plaintiff, who was then an infant, could accept or exercise possession: the donors never objected, and made no attempt to revoke their gift: no division was necessary, as the whole of the land was in the possession of the plaintiff's father. (2) The fact that the shares were undivided did not render the gift invalid: this was not a gift by members of an undivided family. was f an pre-ntiff,

a member of another coparcenary: no consent was necessary to validate the alienation, nor was there anyone who did or could object. (3) The plaintiff's claim was not barred by limitation: the property did not pass to the mortgagee until the 1st January, 1887, and this suit, instituted on the 2d January, 1899, allowance being made for the vacation, was therefore in time. (4) The auction-purchaser was not a necessary party: the plaintiff was not bound to sue every possible claimant to the land: if he chose to leave the question that might arise between him and the auction-purchaser to future settlement, he did it at his own risk: he was *dominus litis*. *JOITARAM RAMKRISHNA v. RAMKRISHNA NANDLAL (1902)*

[I. L. R., 27 Bom., 31]

3 CONSTRUCTION OF GIFTS.

3.—*Gift to donees jointly.—Where property is given jointly to two persons living as members*

4.—*Gift to idol—Will, construction of.—Idol not in existence at the time of the testator's death—Direction to executors to establish *thakur*—Gift to a class—The rule laid down in the case of *Tagore v. Tagore (1872)*, 9 B. L. R., 377, that the donee of a*

HINDU LAW—GIFT—concluded**3. CONSTRUCTION OF GIFTS—concluded.**

Chander Boral (1898), I L. R., 25 Cal., 405,
followed. That which cannot be done directly by

direction. A bequest in a will "to such of my
grandsons as shall be alive at the death of my daughter,
in equal shares, for and during their respective
lives," if more than one, or "to such grandson alone
for life," if there be only one, is invalid. Where a

it has subsequently possible that they

HINDU LAW—GUARDIAN.

See GUARDIAN

*See HINDU LAW—JOINT FAMILY—POWERS
OF ALIENATION BY MEMBERS—MANAGER.
[I. L. R., 25 All., 407*

of his ward, the lender is bound to ascertain whether
the guardian is acting for the benefit of the minor.
It is only, however, when there has been at the time
of the loan due inquiry as to the necessity for it,
that the lender can obtain a charge over the minor's
property. *Palani v. Gopibai (1902)*
[I. L. R., 26 Bom. 433]

HINDU LAW—HUSBAND AND WIFE.

*See REPRESENTATIVE OF DECEASED PER-
SON . . . I. L. R., 25 Mad., 385*

**1.—Conjugal rights—Wife—Conjugal rights,
suit for enforcement of—Residence of wife at
her parental house—Agreement contrary to Hindu
law and opposed to public policy—Conditions
imposed by decree on husband—Bengal, North-
Western Provinces and Assam Civil Courts Act
(XII of 1887), s. 37, cl. (1)—Contract Act
(IX of 1872), s. 23.—The duty imposed upon a
Hindu wife to reside with her husband, wherever
he may choose to reside, is a rule of Hindu law and
not merely a moral duty. An ante-nuptial agree-
ment on the part of the husband, that he will never
be at liberty to remove his wife from her parental
abode, would defeat that rule of Hindu law, and is
invalid on that ground, as well as on the ground
that it is opposed to public policy. *TEKAIT MON
MOHINI JEMADAI v. BASANTA KUMAR SINGH (1901)*
[I. L. R., 28 Cal., 761; S.C., 5 C. W. N., 873]**

**2.—Guardianship—Rights of husband as
legal guardian of wife—Custom for wife to remain
in custody of parents until maturity—Though a
husband is the legal guardian of his wife from the
moment of his marriage with her, he is, by the
general custom prevailing among the Hindu com-
munity in the Madras Presidency, not entitled to
the actual custody of his wife until she attains
maturity, unless such custody should be necessary
in the interests of the girl. *ABUMUJA MUDALI
v. VIRARAGHAVA MUDALI (1900)*
[I. L. R., 24 Mad., 255]**

HINDU LAW—INHERITANCE.

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[5 C. W. N., 603

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—religious persons (ascetics)—

See LETTERS OF ADMINISTRATION.

[I. L. R., 28 Calc., 608

1. SPECIAL LAWS.

SARAGIS.

1.—Custom—Saragis—Alleged custom of exclu-
sion of daughters from inheritance to their fathers,
set up but not proved—Semble that no custom
exists in the North-Western Provinces of India

2. MIGRATING FAMILIES.

2.—Presumption as to law governing family
settled in one place other than that of its origin—

HINDU LAW—INHERITANCE— continued.

2 MIGRATING FAMILIES—concluded.

mentary evidence pointing to the same conclusion.
Held, further, that, the succession being governed
by the Mitakshara law, the brother and not the

CHUNDER DHARAL (1902)

[I. L. R., 29 Calc., 433; s.c., 11 C. W. N., 490;
I. R., 29 I. A., 82

3. GENERAL RULES AS TO SUCCESSION.

3.—Dayabhaga—Consanguinity—Spiritual
benefit.—Under the Bengal School of Hindu law,
inheritance depends on consanguinity so far as the
near relatives are concerned, but in the case of
remoter relations the law falls back on the principle
of spiritual benefit NOGENDRA NANDINI DASGUPTA v.
BENOT KRISHNA DEB (1902)

[I. L. R., 30 Calc., 531; s.c., 7 C. W. N., 121

4 GENERAL HEIRS

SAPINDAS.

4.—Mitakshara—Succession—Question of pri-
ority between the son of the paternal uncle of the

5 SPECIAL HEIRS

(a) MALES.

5.—Brother's grandson—Brother's grand-
son preferred to widow of a daughter's son.—The
widow of a daughter's son is not entitled to succeed

HINDU LAW—INHERITANCE— continued.

5. SPECIAL HEIRS—concluded.

(a) MALES—concluded.

6.—Husband, heirs of—*Dayabhaga*—Heir—

subsequent to marriage should be treated as part of the nuptial presents—According to the Bengal School of Hindu Law, the brother is the preferential heir to the husband's movable property obtained from her father after her marriage, by a woman who has died childless. *Jadoo Nath Sircar v. Bussant*

7.—Uncle—Succession—Paternal aunt—Pater-

(b) FEMALES

10.—Widow—Re-marriage—Succession to a son of first marriage, notwithstanding re-marriage—*Hindu Widow's Re-marriage Act (XV of 1856)*, ss. 2 and 5—The widow of a Hindu married a second time. Subsequently to her re-marriage, her son by her first marriage died childless. Held that she was entitled to succeed to his property, notwithstanding her re-marriage. *CHAMAR HARI DALMEEL v. KASHI* (1902). I. L. R., 28 Bom., 388

■ ILLEGITIMATE CHILDREN.

11.—Sudras—Illegitimate son—*Mitakshara* law—Sut for partition by illegitimate son—*Dasputra*—Right of illegitimate sons among Sudras—

HINDU LAW—INHERITANCE— continued.

6 ILLEGITIMATE CHILDREN—concluded.

Position of a son by a female slave.—Under the *Mitakshara* School of Hindu law, an illegitimate son of a Sudra, not born of a female slave, cannot claim a share in the family property, where his father has no other son with his interest

Kirpal Narain

R., 19 Calc.,

Gain (1875).

I. L. R., 1 Calc., 1, referred to. *Jogendra Bhupati Harrochundra v. Nityanand Man Singh* (1890).

I. L. R., 18 Calc., 151, distinguished. *Semle*.—Under the *Mitakshara* law, an illegitimate son of a Sudra, by a female slave, does not occupy the same position as a son lawfully begotten. He does not at his birth acquire a joint interest with his father in the ancestral family property. It is only after the father's death that he may claim a share in the family property, and during his father's lifetime he may take a share by his father's choice:

brother against the grandsons for property of the deceased divided brother.—Plaintiff and *R* were divided brothers in a family of Sudras. *R* kept a permanent concubine, by whom he had two illegitimate sons. Both of these sons predeceased *R*, leaving legitimate sons of their own then surviving. *R* then died. Plaintiff now sued, claiming to be his heir, to recover his property, which was in the possession of *R*'s grandsons. Held that plaintiff was not entitled to recover. Whether an illegitimate son of an illegitimate son could, on the principle of *jure representationis*, represent the illegitimate son of, before the inheritance opened, the latter predeceased his father—*quere*. *KAMALINGA MURPAN v. PAVADAI GOUDAN* (1901)

[I. L. R., 25 Mad., 519]

7 IMPARTIBLE PROPERTY.

13.—Devolution of impartible property—Right

—Under the law of *Mitakshara*, when impartible property passes by survivorship from one line to another, it devolves, not necessarily on the co-parcener nearest in blood, but on the nearest co-parcener of the senior line. The holder of an impartible *samindari* had three wives. By the first he left no issue; by the second he had issue *M*, *R* and *P*, by the third he had issue *V*. Upon the death of the *samindari*, he was succeeded, first by *M*, then by *M*'s son, and then by *R*, who held the estate for many years. When *R* died, possession of the estate was taken by the

HINDU LAW—INHERITANCE— continued.

7. IMPARTIBLE PROPERTY—continued.

grandson of his whole brother P, whereupon P's son claimed it, contending that he stood in a nearer class of heirs. Held that the grandson of P was the nearest co-parcener of the senior line, and was entitled in preference to P's son, who belonged to the junior line. *Naraganti Achammagaru v Venkat-achalapati Nayanar*, I. L. R., 4 Mad, 250, followed. *Subramanya Pandya Chokka Talavar v Sira Subramanya Pillai*, I. L. R., 17 Mad, 316, referred to. The question as to ones of proof of partibility considered. An estate had been held,

of the country, leaving a younger brother of the

a temporary measure, the *palayagar* was granted an

the *palayagar*, but the arrangement was again varied, the *palayagar* receiving ten per cent of the gross collections. In 1817, instructions were issued to the effect that villages should be given over to the *palayagar* of a value equal to the average gross amount of his then income, from whatever source

dants from the family of the grantee by his third

HINDU LAW—INHERITANCE— continued.

7. IMPARTIBLE PROPERTY—concluded.

wife. Plaintiff now sued for partition, when the

GAPPA KALAKKA THOLA UDAYAR v KACHI KALYANA
RANGAPPA KALAKKA THOLA UDAYAR (1901)
[I. L. R., 24 Mad, 562]

8 JOINT PROPERTY AND SURVIVORSHIP.

14.—Gift to donees jointly.—Death of donee
—Survivorship—Joint tenancy—Tenancy in
common.—Where property is given jointly to two
persons living as members of a joint Hindu family,
each donee takes an interest in the property which
passes to his heirs at his death, and not to the other
donee by survivorship. Two brothers, living in union
as a joint Hindu family, were jointly given certain
property. One of them died childless, leaving a
widow. Held that the widow was entitled to a
moiety of the property as heir of her husband,
and that it did not pass to the other brother by sur-
vivorship. *BAI DIWALI v PATEL BECHARDAS*
(1903) I. L. R., 26 Bom., 445

15.—Grandsons—Two grandsons through the
same daughter take estate as joint ancestral
estate.—Held that, under the Mitakshara law, the
two sons of a Hindu's only daughter succeed on their
mother's death to his estate jointly, with benefit of
survivorship, as being joint ancestral estate. *Jasoda
Koer v. Shro Pershad Singh* (1890), I. L. R., 17
Calc, 33, and *Saminadha Pillai v. Thangathanni*
(1895), I. L. R., 19 Mad, 70, overruled.
VENKATAMMA GARU v VENKATARAMANAYANNA
(1902) I. L. R., 28 I. A., 156;
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7 C. W. N., 1]

9 RELIGIOUS PERSONS.

16.—Succession—Religious institution—Custom

Pillai (1893), I. L. R., 16 Mad, 490, referred to.
RAMJI DASS v LACHHU DASS (1902)
[7 C. W. N., 145]

10 DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE.

17.—Lameness—Exclusion from inheritance—
Lameness of a member of an undivided family—
Effect on right of inheritance.—Lameness which is
not congenital is no bar to the right of inheritance
which a member of an undivided Hindu family ordin-

HINDU LAW—INHERITANCE— concluded.

10. DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE— concluded.

arily possesses. Whether lameness which is congenital would be a bar—*quere*. VENKATA SUBBA RAO v. PURUSHOTTAM (1902)

[I. L. R., 26 Mad., 183

16.—Unchastity—Degradation of daughter on account of incontinence—Effect on her right to inherit the *stridhanam* property of her mother.—Under the Hindu law, the degradation of a daughter on account of incontinence does not put an end to

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ALIENATION—ALIENATION BY FATHER,

DEBTS; . . . 6 C. W. N., 370

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REQUISITES FOR PARTITION; [I. L. R., 30 Calc., 231

RIGHT TO PARTITION—GRANDSON; . . . 7 C. W. N., 688

EFFECT OF PARTITION.

[I. L. R., 24 All., 48

See INSOLVENT ACT, SS. 7 AND 30.

[I. L. R., 26 Mad., 214

See LETTERS OF ADMINISTRATION

[I. L. R., 27 Bom., 140

See LIMITATION ACT, 1877, SCH. II, ART. 64 . . . I. L. R., 25 All., 67

See MALABAR LAW—JOINT FAMILY.

HINDU LAW—JOINT FAMILY— continued.

See MINOR—REPRESENTATION OF MINORS IN SUITS . . . I. L. R., 23 All., 459

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[I. L. R., 25 Bom.,

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See PARTNERSHIP—SUITS RESPECTING PARTNERSHIPS. I. L. R., 27 Bom., 187

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[6 C. W. N., 641

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DISTRIBUTION OF SALE-PROCEEDS. [I. L. R., 23 All., 106

—debts, and joint family business—

See HINDU LAW—PARTITION—EFFECT OF PARTITION.

[I. L. R., 24 Mad., 555

See LIMITATION ACT, 1877, § 19—ACKNOWLEDGEMENT OF DEBTS.

[I. L. R., 25 Mad., 220

—nature of joint family, and position of manager—

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—powers of alienation by members—

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[I. L. R., 27 Bom., 267

1. PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY.

(a) GENERALLY.

1.—Self-acquisition—Partition—Burden of proof—Findings of fact—Findings based upon presumptions only—Second appeal—Practice.—In a suit for partition, brought in 1898, the plaintiffs claimed a share in the income of a certain *nam* village which had been purchased by the defendant in 1873. The defendant pleaded (a) that it was his self-acquired property, and (b) limitation. The Court of first instance rejected the claim, but in appeal the Judge held that the burden of proving self-acquisition and exclusive enjoyment lay upon the defendant, and that, in the absence of such proof,

HINDU LAW—JOINT FAMILY— continued.

1 PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—concluded.

(a) GENERALLY—concluded

the presumption was in favour of the plaintiffs. He therefore reversed the decree and awarded the plaintiffs' claim. On appeal to the High Court: *held* (reversing the decree, and remanding the case for re-trial) that the burden of proof lay on the plaintiffs. It was for them to show that the purchase had been made out of ancestral funds, and they were also bound to prove that they had been in receipt of their share of the income. That burden could not be shifted on the defendant, who acquired the property and in whose name and possession it had admittedly been for years. *VENATK NARASIMH v. DATTO GOVIND* (1900)

[I. L. R., 25 Bom., 367]

(b) EVIDENCE OF SEPARATION.

2.—*Mitakshara—Partition*—The disruption of a joint family cannot be effected by an order of Court against the intention of the parties, unless it is followed by an actual conversion of the joint tenancy into a tenancy in common, or by an actual partition by metes and bounds. *MUDIT NARAYAN SINGH v. HANGLAL SINGH* (1902) . I. L. R., 29 Calc., 797

2 NATURE OF, AND INTEREST IN, PRO- PERTY.

3.—*Mitakshara family—Deed executed by a member—Self-acquired property—Right of suit*—The members of a *Mitakshara* family are all joint tenants of the undivided property in which no member has any defined share; and the property passes, on the death of any member, to the survivors

PRASAD (1901) . 6 C. W. N., 651

3 NATURE OF JOINT FAMILY

4.—*Mitakshara doctrine of joint family property—Limitation Act (XV of 1877), Sch II, Art. 106—Partnership—Contract Act (IX of 1872), ss. 233, 253—V* and his five sons constituted an undivided Hindu family *V* and his three elder sons lived apart from the two youngest sons, and were in possession of some ancestral property. The two youngest sons were plaintiff and first defendant, respectively, in this suit. Plaintiff sued this brother for an account, and for partition of certain property which he alleged to be the property of a

HINDU LAW—JOINT FAMILY— continued.

3. NATURE OF JOINT FAMILY—concluded.

and another v. Shri Anand Singh, & A. I. A., 189, distinguished Per BHASHAM AYYANGAR, J.—It was impossible to regard plaintiff and first defendant as forming in themselves an undivided family owning joint family property as a corporate body. *Sham Narain v. Court of Wards, 20 W. E., C. E., 197*, commented on. The origin and nature of the *Mitakshara* doctrine of joint family property discussed. *Peddayya v. Ramalingam, I. L. R., 11 Mad., 408*, referred to. *Radha Churn Dass v. Kripa Sindhu Dass, I. L. R., 5 Calc., 474*, considered. *Rampershad Tewarry v. Sheochurn Dass, 10 M. I. A., 490*, distinguished. *SUDANANAM MAISTRI v. NARASIMHULU MAISTRI* (1901)

[I. L. R., 25 Mad., 149]

4 DEBTS, AND JOINT FAMILY BUSINESS.

5.—*Debt incurred by senior member of family—Mortgage of family property by senior member—Decree against mortgagor—Purchase under that decree—Suit for partition of property among the co-parteners—Recognition of debt as binding on co-parteners—Suit by purchaser for possession—Evidence of award in partition insufficient as showing necessity for original mortgage*—An undivided Hindu family consisted of *A*, his three sons, and his nephew *A* mortgaged family land while the nephew was a minor. The mortgagee filed a suit and obtained a decree on the mortgage, in execution of which the land was put up for sale and purchased by plaintiff. The nephew was not made a party to that suit. *A* died, whereupon the nephew instituted a suit for partition against *A*'s sons. Plaintiff was not a party to that suit. The matters in dispute therein were referred to

cover the land so awarded to the nephew, but adduced

[I. L. R., 28 Mad., 28]

HINDU LAW—JOINT FAMILY— *continued.*

4. DEBTS, AND JOINT FAMILY BUSINESS— *continued*

6—Document executed by eldest brother on understanding that all would join—*Proposed agreement with all members of Hindu family—Agreement not perfected—Execution of document by eldest brother upon under-*

brothers having refused to execute it when asked to

separately named each of the three brothers as parties; they were not described as being undivided, and the eldest was described as only representing his son. *Held* that the document constituted merely a proposed agreement which had never been per-

reason that the person who had alone executed it

7.—Liability of sons for father's debts—*Joint Hindu family—Liability of sons to pay their father's debts—Limitation—Act XV of 1877 (Indian Limitation Act), Sch II, Art. 120—*The father of a joint Hindu family executed, on the 23rd June, 1898, a simple money bond, payable on the 18th June, 1894. The money not being paid on due date, the creditor sued the father alone, and obtained a decree against him on the 17th June,

payable, and (2) that the suit was one to which Art. 120 of the second Schedule to the Indian Limitation Act, 1877, applied, and was therefore not barred by limitation. *Badri Prasad v. Madan Lal* (1933), 1 L. R., 15 All. 78, followed. *Malle-*

HINDU LAW—JOINT FAMILY— *continued.*

4. DEBTS, AND JOINT FAMILY BUSINESS— *concluded.*

8—Loan taken by Manager—*Whether other members liable.*—The karta of a joint family governed by the *Dayabhaga* law executed a note of hand, and it was alleged by the plaintiff that the money was borrowed by him for the purpose of carrying on a trade in his name, but that the income was spent for the benefit of the joint family. The

that the view taken by the Judge was erroneous, and that the proposition may be true as regards the sons in a *Mitakshara* family as to debts contracted by the father, but not as regards other members. Also that, in order to make the brother of the maker

5. POWERS OF ALIENATION BY MEMBERS. MANAGER.

9—Allegation of managership—*Contract for sale of land by one of three brothers—Allegation in plaint that vendor was managing member—No allegation of authority or ratification by others—Suit for specific performance against all—Cause of action.*—A plaint alleged that first defendant, as managing member of an undivided family consisting of the three defendants, had entered into a contract to convey certain land to plaintiff, and had placed him in possession thereof, after receiving a sum of money in part payment. There was no allegation that the other defendants were parties to the contract, or that they had authorized the first defendant to enter into it, or that they had ratified it. The plaint claimed specific performance of the contract as against all the defendants. *Held* that it disclosed

against first defendant, without determining whether the sale by him would or would not bind the interests of the other defendants in the property. *Kosuri Ramabai v. Italcy Ramalingam* (1902)

[I. L. R., 28 Mad., 74]

HINDU LAW—JOINT FAMILY—
*continued.***5. POWERS OF ALIENATION BY MEMBERS**
*—continued.***MANAGER—continued.**

10.—Minority—Joint Hindu family—Mistakarsa—Appointment of guardian of member of family—Liability of members on mortgages executed by karta—A guardian of the property of an infant cannot properly be appointed in respect of the infant's interest in the property of an undivided

far as they were found to have been made for the benefit of the family and for legal necessity, be

family to a money decree for advances as to which necessity had not been established. **GHARIB-ULLAH v. HAKAL SINGH** (1903) . I. L. R., 25 All., 407; [s.c., I. R., 30 I. A., 165; 7 C. W. N., 681]

11.—Power of manager—Karta, power of, to pledge family credit—Ancestral business—A karta of a Hindu joint family possessing an ancestral business has an implied power to pledge the credit

12.—Younger member as manager—

HINDU LAW—JOINT FAMILY—
*concluded.***5. POWERS OF ALIENATION BY MEMBERS**
*—concluded.***MANAGER—concluded.**

family to alienate or otherwise deal with immovable

6. SUITS FOR POSSESSION.

13.—Coparcener—Possession—Suit by coparcener for exclusive possession—Failure to prove right

On appeal, the Judge concurred with the lower Court in holding that the plaintiff had failed to prove his

HINDU LAW—MAINTENANCE.

Col.

RIGHT TO MAINTENANCE—

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(c) SON'S WIDOW	"
(d) WIDOW	453

RIGHT TO MAINTENANCE.**(a) CONCUBINE**

1.—Permanent connection—Gift of joint family property—Father—Son's liability—Where, in a

HINDU LAW—MAINTENANCE— continued.

RIGHT TO MAINTENANCE—continued.

(a) CONJUGINE—concluded.

on his death that his estate, in the hands of those who take it, becomes liable for her maintenance. *NINGABEDDI v. LAKSHMAWA* (1901)

[I. L. R., 26 Bom., 163]

(b) DAUGHTER.

2.—*Sonless widowed daughter—Right of such daughter to claim separate maintenance—Obligations of the husband's family—Costs—A sonless widowed daughter entitled, under the law, to separate maintenance which has d*

LALL HALDAR (1901)

[I. L. R., 28 Cal., 278;
S.O., 5 C. W. N., 297]

(c) SON'S WIDOW.

3.—*Daughter-in-law—Her claim to maintenance against self-acquired property devised by her father-in-law—The widow of a predeceased unseparated son has no right to maintenance from a*

4.—*Bengal School—Mitakshara—Widowed daughter-in-law, maintenance of—Moral obligation—Heir of father-in-law—Legal obligation—Moral right, forfeiture of—Severance from father-in-law's family—It is the duty of the father-in-law to maintain his widowed daughter in law. This obligation is legally enforceable where the father-in-law has by survivorship obtained property in which his son had a vested interest, as in a Mitakshara family. Where the father, on the death of his son, does not become entitled to any interest or property which the son had, the obligation to maintain the son's widow is only moral, and cannot be enforced in a Court*

The right to be maintained, where it exists, is not necessarily forfeited by a widow who resides away

HINDU LAW—MAINTENANCE— continued.

RIGHT TO MAINTENANCE—continued.

(c) SON'S WIDOW—continued.

from her father-in-law's house, as long as she remains chaste. *Raja Pirthee Sing v. Rani Raj Koor* (1873), 20 W. R., 21; *Kasturba v. Shreegaram* (1879), I. L. R., 3 Bom., 372, and *Gokidi v. Lakkmidas Khimji* (1890), I. L. R., 14 Bom., 490, followed. If, therefore, the daughter-in-law remains a dependent member of her husband's family, the mere fact of her residence elsewhere will not disentitle her to maintenance. Where a daughter-in-law leaves her father-in-law's house during his lifetime, with the intention of residing permanently in her father's house as a member of his household, and demands and obtains from her father-in-law a Government Promissory Note belonging to her husband, which was all the money she considered herself entitled to, and intends to and does sever herself from her deceased husband's family, though she leaves the house without any quarrel with her father-in-law, she ceases to be a

SURABHAN JENAB (1901) A. C. W. L., 100

5.—*Separate maintenance of widowed daughter-in-law—Dependent member—Non-residence with the husband's family—Moral obligation of the father-in-law—Legal obligation of his heir—No distinction between Dayabhaga and Mitakshara Law—A Hindu widow does not forfeit her right to separate maintenance out of the property inherited from her father-in-law by reason of non-residence with the family of her deceased husband, unless such non-residence be for unchaste or immoral purposes. The fact that a widowed daughter-in-law has taken up her residence apart from her father-in-law with her own parents or relations does not annul his moral obligation to maintain her. It may remain dormant or in abeyance, but it subsists continuously; and, whether it be dormant or active at the death of the father-in-law, it devolves as a subsisting obligation upon his heirs, and is transformed into a legal obligation. The term "dependent member" of a family does not necessarily mean "resident member." There is no valid ground for making any distinction between the rights of maintenance of a Hindu widow under the Bengal and under the Mitakshara law. *Raja Pirthee Sing v. Rani Raj Koor* (1873), 12 B. L. R. (P. C.), 233; *Kasturba v. Shreegaram* (1879), I. L. R., 3 Bom., 372; *Narayanrao Ram Chandra Pant v. Ramabai* (1879), I. L. R., 3 Bom., 415; *Janki v. Nand Ram* (1889), I. L. R., 11 All., 194; *Mokhoda Dasi v. Nundo Lal Haldar* (1901), I. L. R., 28 Cal., 278; *Khetramani Dasi v. Kishinath Das* (1868), 2 B. L. R. (A. C.), 15; *Rangammal v. Echammal* (1899), I. L. R., 22 Mad., 804; *Yamunabai v. Manabai* (1899), I. L. R., 23 Bom., 609; *Kamini Dassee v. Chandra Pote Mondle* (1859), I. L. R., 12 Cal.,*

HINDU LAW—MAINTENANCE— continued.

RIGHT TO MAINTENANCE—continued.

(c) SON'S WIDOW—concluded.

373, referred to and discussed. *SIDDESTRY DASSEN v. JONARDAN SARKAR* (1902)

[*L. L. R.*, 29 Cal., 557; s.c., 6 C. W. N., 530

(d) WIDOW.

6.—*Hindu widow—Maintenance—Ancestral property not alienable in defeasance of widow's right of maintenance.*—The holder of ancestral property cannot, where there exists a widow having a right to

until it is fixed, and charged upon the estate by a decree or by agreement; and, if such estate has been alienated and is in the hands of a *bona fide* transferee, the widow cannot follow the property, even though it be the case that the transferee had notice of her claim for maintenance. *Sheo Bakesh Singh v. Mussumat Gunneshee Koonoor*, 5 D. A., N. W. P., 1564, I, 223; *Lakshman Ramchandra*

8.—*Decree against representative of family creating charge on family property—Right to exe-*

create a charge on property, and the property to be charged can be otherwise identified, it is immaterial that the decree does not specify the property by metes and bounds. A widow sued three undivided brothers for maintenance, and obtained a decree which created a charge on certain family property in respect of the maintenance sued for. The son of the first defendant was a minor at the date of the decree, and was not a party to it. The widow attached the property. Upon the death of the first defendant, subsequent to the decree, his son was added as legal representative, and claimed the property by right of survivorship, and sought to have it released from attachment on the ground that it was not liable for the widow's maintenance. Held that, as the property was charged by the

HINDU LAW—MAINTENANCE— concluded.

RIGHT TO MAINTENANCE—concluded.

(d) WIDOW—concluded.

and the decree being not merely a personal one against the father alone, but against the representatives of the family *Muttia v. Virammal*, 1 *L. R.*, 10 Mad., 283, followed. *MINARSHI ACHI v. CHINNAFFA UDAYAN* (1901)

[*L. L. R.*, 24 Mad., 689

9.—*Unchastity of widow, as disentitling her to maintenance—Charge not specifically raised in pleadings or issues.*—A charge of unchastity, as disentitling a widow to maintenance, must be specifically raised in the pleadings or issues. Where there

SIDICK v. ATENSHABAI (1903)

[*L. L. R.*, 27 Bom., 485;
s.c., *L. R.*, 30 I. A., 127;
7 C. W. N., 685.

10.—*Hindu widow—Widow in possession of deceased husband's property ousted by adopted son—Mesne profits—Maintenance—Set-off—Sums expended on funeral ceremonies of late owner—A*

mesne profits, (1) *sums expended on funeral ceremonies of*

reasonable amounts as might have been expended by her on the funeral ceremonies of her late husband, which the adopted son would otherwise have been bound to perform. What was a reasonable maintenance, and what sum should be allowed in respect of the funeral ceremonies under the circumstances, considered. *Sreenatty Nittokasoree Dossee v. Jogendra Nauth Mullick* (1878), *L. R.*, 5 I. A., 55, referred to. *DALEL KUNWAR v. AMBICA PARTAP SINGH* (1903) . . . *L. L. R.*, 25 All., 266

HINDU LAW—MARRIAGE.

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See **HINDU LAW—WIDOW—DISQUALIFICATIONS—RE-MARRIAGE.**

[I. L. R., 26 Bom., 388

See **RESTITUTION OF CONJUGAL RIGHTS.**

[I. L. R., 28 Calc., 37

1. CEREMONIES.

1.—Legitimate marriage expenses—Ceremonies of Griha Pravesham and Ruthusanti—Contract Act (IX of 1872), s. 69—Person interested in making payment—Daughter's marriage expenses defrayed by widowed mother—Claim against brother of the widow's late husband.—The ceremonies of "Griha Pravesham" and "Ruthusanti" are essentially connected with the disposal in marriage of a girl of the Brahmin caste, and form a part of the marriage ceremonies. A Hindu widow performed these ceremonies for her daughter, and sued to recover their cost from her late husband's undivided brother. In a previous case between the same parties it had been decided that the defendant was liable to be charged with the expenses of the marriage of the plaintiff's daughter. Held that plaintiff was entitled to recover the cost of these two ceremonies. The expenses were legitimate marriage expenses, and plaintiff had the right to sue, as she was the person who was interested in making the payment which the defendant (under the decision referred to) was bound to make. **VAIKUNTAM AMMANAR v. KALLIPRAM AYYANGAR (1902) [I. L. R., 28 Mad., 497]**

2. NO OBLIGATION TO GET DAUGHTER MARRIED

2.—Liability of father to get his daughter married.—Under the Hindu law, a father is under no legal obligation to get his daughter married. **Vaikuntam Ammanar v. Kallipram Ayyangar, I. L. R., 23 Mad., 612, explained. Where a wife expended money on her daughter's marriage, and then sued her husband for the amount so expended: Held that she was not entitled to recover. **SUNDARI AMMAL v. SUBBANANIA AYYAR** (1902) [I. L. R., 28 Mad., 505]**

3. VALIDITY OR OTHERWISE OF MARRIAGE

3.—Marriage between persons of different castes—Marriage between Vaidya and Kayastha, validity of—Validity of such marriages in Tippera—Custom—Vaidya Sudra—Where plaintiff's father was a Vaidya and his mother a Kayastha, and the defendant took an objection that plaintiff was therefore an illegitimate son: Held that it could not be set aside. **...**

HINDU LAW—MARRIAGE—concluded.**3. VALIDITY OR OTHERWISE OF MARRIAGE—concluded.**

Courts as to make children from unequal marriages illegitimate. Also that such marriages are recognised by local custom in the district of Tippera, and are therefore valid. **RAM LAL SHOOKOOL v. AEROY CHARAN MITTER** (1903). 7 C. W. N., 619

4. EVIDENCE AS TO, AND PROOF OF, MARRIAGE.

4.—Cutchi Memons—Marriage, evidence of, ...

the circumstances of the marriage made it natural that the wife should be an object of the husband's testamentary bounty and improbable that he should have left her to depend on her legal right to maintenance. In this case it was held that the circumstances of the marriage made it not unlikely that the testator would have taken the latter course. **dra test the reje by RAI**

HINDU LAW—PARTITION.

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(a) GRANDSON	460
(b) ILLEGITIMATE CHILDREN	"
(c) PURCHASER FROM CO-PARTNER	"
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—effect of partition—**See HINDU LAW—****JOINT FAMILY—**

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—effect of partition—concluded.

See HINDU LAW—concluded.

STRIDHAN—

DESCRIPTION AND DEVOLUTION
OF STRIDHAN;

[I. L. R., 24 All., 67]

POWER TO DISPOSE OF STRI-
DHAN, I. L. R., 24 All., 82**1 REQUISITES FOR PARTITION**

1.—Evidence—Joint family—Evidence of separation—Conduct of parties as showing intention—Decree in litigation between members creating partition—Decree ascertaining shares of individual members—Where it was found (1) that the result of former litigation had been to ascertain the shares of individuals of a Hindu family, and that, although there had been, from the nature of

SINGH v. LAKHPATI KOER (1903)

[I. L. R., 30 Cal., 231;
N. C., 7 C. W. N., 182; L. R., 30 I. A., 1

2.

— Deed defining and allotting shares—Effect on deed of subsequent conduct of the parties—Effect of deed as regards minor members of joint family—Resumption of member after once separating himself—An ekranama executed by the members of a joint family, some of

together as a member of the joint family as before or to separate his own business" Held that

their shares by metes and bounds or to continue to live together and enjoy their property in common

ekranama The legal effect of the ekranama could

HINDU LAW—PARTITION—continued.**1. REQUISITES FOR PARTITION—concluded.**

not be controlled or altered by evidence of the subsequent conduct of the parties; but such conduct in this case was not inconsistent with an intention to subject the whole property to a division of

only (according to the text of *Vrikshapati* quoted in the *Mitakshara*, Ch II, s 9) with a father, brother or paternal uncle. **BALESHEN DAS v. RAM NARAIN SAHU (1903)**

[I. L. R., 30 Cal., 728;
N. C., 7 C. W. N., 578; L. R., 30 I. A., 189]**2. PROPERTY LIABLE OR NOT TO
PARTITION**

rayatwari village R, the father of plaintiff and

delivered to R, and were actually delivered to him

November, 1839, notified to R that his name was

order that items 6 and 7 had been "resumed and fully assessed" R had died at a date prior to this, and second defendant was holding the office. On a suit being instituted by plaintiff for partition: **Held per BHASHAM AYYANGAR, J.** that when a

assessment in excess of quit-rent being resumed. Similarly, the enfranchisement of a service *nam* does not operate as a resumption and a fresh grant by the Government subject to the payment of a quit-rent,

HINDU LAW—PARTITION—continued.**2. PROPERTY LIABLE OR NOT TO PARTITION—concluded.**

any more than it is so in the case of the enfranchisement of a personal slave—*Id.*

Narayana v. Chengalammal, *I. L. R.*, 10 *Mad.*, 1, followed *Venkata v. Rama*, *I. L. R.*, 8 *Mad.*, 249, explained *Dharnipragada v. Kadambari*, *I. L. R.*, 21 *Mad.*, 47; and *Venkatarayadu v. Venkata Ramayya*, *I. L. R.*, 15 *Mad.*, 294, dissented from. *Per MOORE, J.*—Even assuming item No. 6 to be the self-acquisition of *R.*, according to *Dharnipragada v. Kadambari*, *I. L. R.*, 21 *Mad.*, 47, and *Venkatarayadu v. Venkata Ramayya*, *I. L. R.*, 15 *Mad.*, 294, the plaintiff was entitled, as his son, to his share. As to items 6 and 7, there was no enfranchisement and no fresh grant or title-deed in favour of second defendant. *They were* *1-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000-1001-1002-1003-1004-1005-1006-1007-1008-1009-1010-1011-1012-1013-1014-1015-1016-1017-1018-1019-1020-1021-1022-1023-1024-1025-1026-1027-1028-1029-1030-1031-1032-1033-1034-1035-1036-1037-1038-1039-1040-1041-1042-1043-1044-1045-1046-1047-1048-1049-1050-1051-1052-1053-1054-1055-1056-1057-1058-1059-1060-1061-1062-1063-1064-1065-1066-1067-1068-1069-1070-1071-1072-1073-1074-1075-1076-1077-1078-1079-1080-1081-1082-1083-1084-1085-1086-1087-1088-1089-1090-1091-1092-1093-1094-1095-1096-1097-1098-1099-1100-1101-1102-1103-1104-1105-1106-1107-1108-1109-1110-1111-1112-1113-1114-1115-1116-1117-1118-1119-1120-1121-1122-1123-1124-1125-1126-1127-1128-1129-1130-1131-1132-1133-1134-1135-1136-1137-1138-1139-1140-1141-1142-1143-1144-1145-1146-1147-1148-1149-1150-1151-1152-1153-1154-1155-1156-1157-1158-1159-1160-1161-1162-1163-1164-1165-1166-1167-1168-1169-1170-1171-1172-1173-1174-1175-1176-1177-1178-1179-1180-1181-1182-1183-1184-1185-1186-1187-1188-1189-1190-1191-1192-1193-1194-1195-1196-1197-1198-1199-1200-1201-1202-1203-1204-1205-1206-1207-1208-1209-1210-1211-1212-1213-1214-1215-1216-1217-1218-1219-1220-1221-1222-1223-1224-1225-1226-1227-1228-1229-1230-1231-1232-1233-1234-1235-1236-1237-1238-1239-1240-1241-1242-1243-1244-1245-1246-1247-1248-1249-1250-1251-1252-1253-1254-1255-1256-1257-1258-1259-1260-1261-1262-1263-1264-1265-1266-1267-1268-1269-1270-1271-1272-1273-1274-1275-1276-1277-1278-1279-1280-1281-1282-1283-1284-1285-1286-1287-1288-1289-1290-1291-1292-1293-1294-1295-1296-1297-1298-1299-1300-1301-1302-1303-1304-1305-1306-1307-1308-1309-1310-1311-1312-1313-1314-1315-1316-1317-1318-1319-1320-1321-1322-1323-1324-1325-1326-1327-1328-1329-1330-1331-1332-1333-1334-1335-1336-1337-1338-1339-1340-1341-1342-1343-1344-1345-1346-1347-1348-1349-1350-1351-1352-1353-1354-1355-1356-1357-1358-1359-1360-1361-1362-1363-1364-1365-1366-1367-1368-1369-1370-1371-1372-1373-1374-1375-1376-1377-1378-1379-1380-1381-1382-1383-1384-1385-1386-1387-1388-1389-1390-1391-1392-1393-1394-1395-1396-1397-1398-1399-1400-1401-1402-1403-1404-1405-1406-1407-1408-1409-1410-1411-1412-1413-1414-1415-1416-1417-1418-1419-1420-1421-1422-1423-1424-1425-1426-1427-1428-1429-1430-1431-1432-1433-1434-1435-1436-1437-1438-1439-1440-1441-1442-1443-1444-1445-1446-1447-1448-1449-1450-1451-1452-1453-1454-1455-1456-1457-1458-1459-1460-1461-1462-1463-1464-1465-1466-1467-1468-1469-1470-1471-1472-1473-1474-1475-1476-1477-1478-1479-1480-1481-1482-1483-1484-1485-1486-1487-1488-1489-1490-1491-1492-1493-1494-1495-1496-1497-1498-1499-1500-1501-1502-1503-1504-1505-1506-1507-1508-1509-1510-1511-1512-1513-1514-1515-1516-1517-1518-1519-1520-1521-1522-1523-1524-1525-1526-1527-1528-1529-1530-1531-1532-1533-1534-1535-1536-1537-1538-1539-1540-1541-1542-1543-1544-1545-1546-1547-1548-1549-1550-1551-1552-1553-1554-1555-1556-1557-1558-1559-1560-1561-1562-1563-1564-1565-1566-1567-1568-1569-1570-1571-1572-1573-1574-1575-1576-1577-1578-1579-1580-1581-1582-1583-1584-1585-1586-1587-1588-1589-1590-1591-1592-1593-1594-1595-1596-1597-1598-1599-1600-1601-1602-1603-1604-1605-1606-1607-1608-1609-1610-1611-1612-1613-1614-1615-1616-1617-1618-1619-1620-1621-1622-1623-1624-1625-1626-1627-1628-1629-1630-1631-1632-1633-1634-1635-1636-1637-1638-1639-1640-1641-1642-1643-1644-1645-1646-1647-1648-1649-1650-1651-1652-1653-1654-1655-1656-1657-1658-1659-1660-1661-1662-1663-1664-1665-1666-1667-1668-1669-1670-1671-1672-1673-1674-1675-1676-1677-1678-1679-1680-1681-1682-1683-1684-1685-1686-1687-1688-1689-1690-1691-1692-1693-1694-1695-1696-1697-1698-1699-1700-1701-1702-1703-1704-1705-1706-1707-1708-1709-1710-1711-1712-1713-1714-1715-1716-1717-1718-1719-1720-1721-1722-1723-1724-1725-1726-1727-1728-1729-1730-1731-1732-1733-1734-1735-1736-1737-1738-1739-1740-1741-1742-1743-1744-1745-1746-1747-1748-1749-1750-1751-1752-1753-1754-1755-1756-1757-1758-1759-1760-1761-1762-1763-1764-1765-1766-1767-1768-1769-1770-1771-1772-1773-1774-1775-1776-1777-1778-1779-1780-1781-1782-1783-1784-1785-1786-1787-1788-1789-1790-1791-1792-1793-1794-1795-1796-1797-1798-1799-1800-1801-1802-1803-1804-1805-1806-1807-1808-1809-1810-1811-1812-1813-1814-1815-1816-1817-1818-1819-1820-1821-1822-1823-1824-1825-1826-1827-1828-1829-1830-1831-1832-1833-1834-1835-1836-1837-1838-1839-1840-1841-1842-1843-1844-1845-1846-1847-1848-1849-1850-1851-1852-1853-1854-1855-1856-1857-1858-1859-1860-1861-1862-1863-1864-1865-1866-1867-1868-1869-1870-1871-1872-1873-1874-1875-1876-1877-1878-1879-1880-1881-1882-1883-1884-1885-1886-1887-1888-1889-1890-1891-1892-1893-1894-1895-1896-1897-1898-1899-1900-1901-1902-1903-1904-1905-1906-1907-1908-1909-1910-1911-1912-1913-1914-1915-1916-1917-1918-1919-1920-1921-1922-1923-1924-1925-1926-1927-1928-1929-1930-1931-1932-1933-1934-1935-1936-1937-1938-1939-1940-1941-1942-1943-1944-1945-1946-1947-1948-1949-1950-1951-1952-1953-1954-1955-1956-1957-1958-1959-1960-1961-1962-1963-1964-1965-1966-1967-1968-1969-1970-1971-1972-1973-1974-1975-1976-1977-1978-1979-1980-1981-1982-1983-1984-1985-1986-1987-1988-1989-1990-1991-1992-1993-1994-1995-1996-1997-1998-1999-2000-2001-2002-2003-2004-2005-2006-2007-2008-2009-2010-2011-2012-2013-2014-2015-2016-2017-2018-2019-2020-2021-2022-2023-2024-2025-2026-2027-2028-2029-2030-2031-2032-2033-2034-2035-2036-2037-2038-2039-2040-2041-2042-2043-2044-2045-2046-2047-2048-2049-2050-2051-2052-2053-2054-2055-2056-2057-2058-2059-2060-2061-2062-2063-2064-2065-2066-2067-2068-2069-2070-2071-2072-2073-2074-2075-2076-2077-2078-2079-2080-2081-2082-2083-2084-2085-2086-2087-2088-2089-2090-2091-2092-2093-2094-2095-2096-2097-2098-2099-2100-2101-2102-2103-2104-2105-2106-2107-2108-2109-2110-2111-2112-2113-2114-2115-2116-2117-2118-2119-2120-2121-2122-2123-2124-2125-2126-2127-2128-2129-2130-2131-2132-2133-2134-2135-2136-2137-2138-2139-2140-2141-2142-2143-2144-2145-2146-2147-2148-2149-2150-2151-2152-2153-2154-2155-2156-2157-2158-2159-2160-2161-2162-2163-2164-2165-2166-2167-2168-2169-2170-2171-2172-2173-2174-2175-2176-2177-2178-2179-2180-2181-2182-2183-2184-2185-2186-2187-2188-2189-2190-2191-2192-2193-2194-2195-2196-2197-2198-2199-2200-2201-2202-2203-2204-2205-2206-2207-2208-2209-2210-2211-2212-2213-2214-2215-2216-2217-2218-2219-2220-2221-2222-2223-2224-2225-2226-2227-2228-2229-2230-2231-2232-2233-2234-2235-2236-2237-2238-2239-2240-2241-2242-2243-2244-2245-2246-2247-2248-2249-2250-2251-2252-2253-2254-2255-2256-2257-2258-2259-2260-2261-2262-2263-2264-2265-2266-2267-2268-2269-2270-2271-2272-2273-2274-2275-2276-2277-2278-2279-2280-2281-2282-2283-2284-2285-2286-2287-2288-2289-2290-2291-2292-2293-2294-2295-2296-2297-2298-2299-2300-2301-2302-2303-2304-2305-2306-2307-2308-2309-2310-2311-2312-2313-2314-2315-2316-2317-2318-2319-2320-2321-2322-2323-2324-2325-2326-2327-2328-2329-2330-2331-2332-2333-2334-2335-2336-2337-2338-2339-2340-2341-2342-2343-2344-2345-2346-2347-2348-2349-2350-2351-2352-2353-2354-2355-2356-2357-2358-2359-2360-2361-2362-2363-2364-2365-2366-2367-2368-2369-2370-2371-2372-2373-2374-2375-2376-2377-2378-2379-2380-2381-2382-2383-2384-2385-2386-2387-2388-2389-2390-2391-2392-2393-2394-2395-2396-2397-2398-2399-2400-2401-2402-2403-2404-2405-2406-2407-2408-2409-2410-2411-2412-2413-2414-2415-2416-2417-2418-2419-2420-2421-2422-2423-2424-2425-2426-2427-2428-2429-2430-2431-2432-2433-2434-2435-2436-2437-2438-2439-2440-2441-2442-2443-2444-2445-2446-2447-2448-2449-2450-2451-2452-2453-2454-2455-2456-2457-2458-2459-2460-2461-2462-2463-2464-2465-2466-2467-2468-2469-2470-2471-2472-2473-2474-2475-2476-2477-2478-2479-2480-2481-2482-2483-2484-2485-2486-2487-2488-2489-2490-2491-2492-2493-2494-2495-2496-2497-2498-2499-2500-2501-2502-2503-2504-2505-2506-2507-2508-2509-2510-2511-2512-2513-2514-2515-2516-2517-2518-2519-2520-2521-2522-2523-2524-2525-2526-2527-2528-2529-2530-2531-2532-2533-2534-2535-2536-2537-2538-2539-2540-2541-2542-2543-2544-2545-2546-2547-2548-2549-2550-2551-2552-2553-2554-2555-2556-2557-2558-2559-2560-2561-2562-2563-2564-2565-2566-2567-2568-2569-2570-2571-2572-2573-2574-2575-2576-2577-2578-2579-25*

HINDU LAW—PARTITION—continued.**4. RIGHT TO PARTITION—continued.****(c) PURCHASER FROM CO-PARCENER—concluded.**

suit by purchaser against survivors for partition of entire estate, for recovery of the portion purchased—*Maintainability*—Plaintiff purchased 2 acres and

nephews (brother's sons). V subsequently died, leaving his two nephews him surviving. After V's decease, plaintiff instituted the present suit against the nephews, in which he claimed partition of the

ventions by **BRASHYAM AYYANGAR, J.**, on the

VENKATARAMAYYA v. AYYAGARI RAMAYYA
(F.B., 1933). I. L. R., 25 Mad., 680

(d) WIDOW.

10.—Limitation Act (XV of 1877), Sch II, Art. 127—Proof of exclusion from joint family property—Mere non-participation in, or refusal to live on, joint property, insufficient—Hindu Law—Suit by one of three widows against her two co-widows for partition of widow's estate in their late husband's property—Proof of unchastity on,

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common, participated for some time in the profits of their late husband's property. After his decease, one of the widows began to lead an immoral life and refused to live with the other two. In 1895 she sued her co-widows for partition and for an allotment of her one-third share of the property. She claimed to have participated in the profits of the family property until 1890, but the defendants contended that she had ceased to participate therein for more than twelve years before the institution of the suit, and raised the plea of limitation. They also pleaded that plaintiff was not entitled to claim partition, by reason of her unchastity. It was proved that plaintiff had been living with her paramour subsequent to her husband's decease, and had supported herself without recourse to the family property, and had refused to live with defendants.

HINDU LAW—PARTITION—continued.**4. RIGHT TO PARTITION—concluded.****(d) WIDOW—concluded.**

Held that the burden lay on the defendants of proving that plaintiff, who was admittedly a tenant-in-common with them till 1882, was excluded from enjoyment of the property. Mere proof of refusal on the part of the plaintiff to live with her co-widows, or of non-participation by her in the family property, did not establish ouster or exclusion by defendants, and there was no other evidence to show that she had abandoned her interest to their knowledge. *Held* also that proof of plaintiff's unchastity after her husband's death did not disentitle her to claim partition of the property by metes and bounds. A widow, being a tenant-in-common, is entitled to partition as a matter of right, and the Court has no discretion in the matter. **SELLAR v. CHINNAMMAL** (1901). I. L. R., 24 Mad., 441

5. EFFECT OF PARTITION.**11.—Contract by managing member of joint**

family, the father, as managing member, entered into a contract by which he undertook to pay to plaintiff any shortfalls that might take place in

RAMACHANDRA PADAYACHI v. KONDAYYA CHETTI
(1901). I. L. R., 24 Mad., 855

12.—Joint Hindu family—Mortgage of an undivided share—Effect on each mortgage of a subse-

[I. L. R., 24 All., 483]

13.—Transactions amounting to partition or separation—Reunion—Agreement to reunite—Minor—Presumption when one co-parcener separates himself—Agreement to remain united—Mitakshara Law.—According to the text of **Prithapati** (*Mitakshara*, Ch. II, s. 9), a reunion in estate, properly so called, can only take place between persons who

HINDU LAW—PARTITION—concluded.**5. EFFECT OF PARTITION—concluded.**

were parties to the original partition. *Semle* : an agreement to reunite cannot be made on behalf of a person during his minority. There is no presumption, when one co-parcener separates from the others, that the latter remain united. Where it is necessary, in order to ascertain the share of the outgoing co-parcener, to fix the shares which the others are, or would be, entitled to, the separation of one may be said to be the virtual separation of all. And an agreement amongst the remaining co-parceners to remain united or to reunite must be proved, like any other fact. In this case, in which the appellant claimed to be entitled on the death of his uncle in 1882 to the property of a joint family by right of survivorship, one of the members had admittedly separated himself in 1869, and no agreement by the other members to remain united or to reunite had been proved; and, upon the circumstances of, and evidence in, the suit, it was held by the Judicial Committee that the appellant had not sufficiently established the state of jointness between himself and his uncle, which was necessary to make his claim successful, and that, even had it been established, transactions in 1889 settled with the appellant's knowledge and consent amounted to a division amongst the members of the family, which would defeat his claim. *BALABUX v. KUSHMADAI* (1903)

[I. L. R., 30 Calc., 725 ;
s.c., 7 C. W. N., 642 ;
I. R., 30 I. A., 130

HINDU LAW—REVERSIONERS.**See HINDU LAW—**

ADOPTION—EFFECT OF ADOPTION ;
[5 C. W. N., 20

ALIENATION—ALIENATION BY
WIDOW ;

DEBTS ;
[I. L. R., 26 Bom., 206

WIDOW—POWER OF . WIDOW—
POWER OF DISPOSITION OR
ALIENATION.

See LIMITATION ACT, 1877, SCH. II—

ART 118 ; I. L. R., 26 Bom., 26
ARTS 120 AND 125 ;

[I. L. R., 26 Mad., 488

ART. 141.

See TITLE—EVIDENCE AND PROOF OF

TITLE—GENERALLY.

[I. R., 28 I. A., 1

1.—Power of reversioners to alienate reversionary interest—Transfer of Property Act (IV of 1882), s. 6, cl (a)—Hindu reversioner's contingent right—Mortgage of such right, validity of—The interest of a Hindu reversioner expectant upon the death of a Hindu female cannot validly be mortgaged by the reversioner. *Brakmadoo Narayan v. Harjan Singh* (1904), I. L. R., 25 Calc., 778, overruled by *Sham Sunder Lal v. Achhan Kunwar*

HINDU LAW—REVERSIONERS

—concluded.

(1899), I. R., 25 I. A., 188 **NAND KISHORE LAL**
v. KANU RAM TEWARY (1902)

[I. L. R., 28 Calc., 355 ;
s.c., 6 C. W. N., 395

2.—Administration suit by reversioners—Practice—Conduct of proceedings.—Under Hindu law, a person entitled to an estate in reversion

gained. If a dedication by a testator, of property to which a reversionary heir would be entitled, is not valid, and the executors propose to carry out the dedication, such an act would entitle the reversioner to sue for the recovery of the property.

I. L. R., 28 Calc., 355 ; s.c., 6 C. W. N., 395
A person entitled to an estate in reversion brings a suit

adopted in the second decree, so far as it can be applied, and the reversioner, who brought the first suit, will be entitled to the conduct of the proceedings. *Zambaco v. Cassaretti* (1871), 12 Q. B. 400.

HINDU LAW—STRIDHAN.

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1. DESCRIPTION AND DEVOLUTION OF STRIDHAN	464
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3. POWER TO DISPOSE OF STRIDHAN	"

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—UNCHASTITY.

[I. L. R., 28 Mad., 509

1. DESCRIPTION AND DEVOLUTION OF STRIDHAN.

HINDU LAW—STRIDHAN—continued.**1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—continued.**

Bank (1903), I. L. R., 25 All., 476—entry No. 2, post, in this column In this case her sons were held entitled to succeed to such property in preference to her daughter. *SHEO SHANKAR LAL v. DEBI SAHAI (1903)* . . . I. L. R. 25 All., 488 ;

[s.c., I. L. R., 30 I. A., 302 ;
7 C. W. N., 831

2. ——— *Mitakshara* — *Property inherited by a female from a female—Benares School of Law—Property taken as heir of a talukdar under the Oudh Estates Act (I of 1869) —Act I of 1869, ss. 2 and 11—Power of alienation over property so inherited*—Under the Hindu Law of the Benares School, there is no distinction, as to the nature of the estate taken, between property inherited by a woman from a male, and property inherited by her from a female. In both cases she takes it, not absolutely as her *stridhan*, but for a qualified estate alienable only under the conditions applicable to such an estate, and with reverter after her death to the heirs of her predecessor in title [see *Sheo Shankar Lal v. Debi Sahai (1903), I. L. R., 25 All., 488—entry No. 1, ante, in this column*]

who inherits property otherwise than as a widow under the Act, and the provisions of s. 11, she had no power of alienation greater than, and irrespective of, her interest under the Hindu Law; the Judicial Commission—

reverted *SHEO PARTAB BANADUR SINGH v. ALLAHABAD BANK (1903)* . . . I. L. R., 25 All., 476 ;
[s.c., I. L. R., 30 I. A., 209 ;
7 C. W. N., 840

3.—*Partition—Mitakshara—Joint Hindu family—Share of mother on partition*—According to the *Mitakshara* law, the share which the mother in a joint Hindu family obtains on partition, after the death of the father, of the joint family property between the mother and the sons, becomes the mother's *stridhan*, which devolves, on her death, upon her own heirs, and not upon the

HINDU LAW—STRIDHAN—concluded.**1. DESCRIPTION AND DEVOLUTION OF STRIDHAN—concluded.**

(1873), 20 W. R., 192; *Lalljeet Singh v. Raj Goomar Singh (1873), 20 W. R., 336; Sheodyal Tewaree v. Jadoo Nath Tewaree (1868), 9 W. R.,*

I. L. R., 11 All., 490, referred to CHHIDDU v. NAUBAT (1901) . . . I. L. R., 24 All., 67

2 EFFECT OF UNCHASTITY

4.—*Inheritance*.—Unchastity does not debar a Hindu woman from inheriting the *stridhan* property of her female relatives *Ganga Jati v. Ghasita (1875), I. L. R., 1 All., 46, followed Ramnath Tolapatro v. Durga Sundari Debi (1878), I. L. R., 4 Calc., 550; Ramananda v. Raikshori Barman (1891), I. L. R., 22 Calc., 347, distinguished NOGENDRA NANDINI DASGI v. BEXOT KRISHNA DEB (1902)*

[I. L. R., 30 Calc., 521 ;
s.c., 7 C. W. N., 121

3 POWER TO DISPOSE OF STRIDHAN

5.—*Mitakshara—Joint Hindu family—Partition—Share of mother on partition*.—The share which is taken by the mother in a Joint Hindu family upon partition of the family property being her *stridhan*, she is capable of alienating it at her pleasure *PAL RAI v. SUBADRALI (1901)*

[I. L. R., 24 All., 82

HINDU LAW—USURY**HINDU LAW—WIDOW.**

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ATION | 468 |
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PRESENTING THE ESTATE, OR PER-
SONALLY | 471 |
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or alienation—***See HINDU LAW—WILL—CONSTRUCTION
OF WILLS—ADOPTION**[I. L. R., 28 Calc., 499***1 INTEREST IN ESTATE OF HUSBAND****BY INHERITANCE.**

1.—Migration by widow of a subject of French India to British India—Acquisition of domicile in British India—Character of her widow's estate.—Migration, by the widow of a Hindu subject of French India, to British India, and acquisition of a British Indian domicile, does not change the character of the estate held by the widow; and, if she does

HINDU LAW—WIDOW—continued.**1. INTEREST IN ESTATE OF HUSBAND—
concluded****BY INHERITANCE—concluded.**

not adopt the system of law prevalent among Hindus in British India, the property inherited by her from her husband will be held by her according to the customary law of French India. *MAILATHI ANNI v. SUBHARAYA MUDALIAR (1901)*

*[I. L. R., 24 Mad., 650***2. POWER OF WIDOW.****POWER OF DISPOSITION OR ALIENATION.**

2.—Power of alienation—Hindu widow—Alienation, power of, over immovable property—Request by husband—Will, construction of—Grant of absolute power, express or implied—Ea-

*Indian
a mere
husband
alien-*

ation, yet, where any such property is given by the husband to the wife with express power of alienation, or when this power is implied by the grant, she would acquire an absolute power of disposal over the property; and, when the gift is made by a Will, the legatee is entitled, under the provisions of s. 25 of the Indian Succession Act, to the whole interest of the testator, unless it appears from the Will that only a restricted interest was intended to be given. Where a Will does not in express terms convey any estate of inheritance to a Hindu widow, still the widow will be entitled to alienate the property at her pleasure, if there is no restriction imposed by the terms of the Will, so far as the power of aliena-

[10 C. W. N., 500

*3. — A lease granted by a Hindu widow, in possession of her widow's estate, does not necessarily become void on her death, but is only voidable by the next inheritor of the estate. *SADAI NAIK v. SERRAI NAIK (1901)**

*[I. L. R., 28 Calc., 533;
s.c., 5 C. W. N., 279*

4. — Properly inherited by widow from her husband—Acquisitions, with the income

HINDU LAW—WIDOW—continued.**2. POWER OF WIDOW—continued.****POWER OF DISPOSITION OR ALIENATION—continued.**

thereof—No indication of intention by widow to make the acquired property part of the husband's estate for the benefit of his heirs—Presumption that widow intended to retain control—A Hindu widow inherited certain property from her husband; and, with the income thereof, acquired land on a usufructuary mortgage for 62 years. She assigned the unexpired portion of the term of the mortgage for consideration, and subsequently died. The reversionary heirs to her late husband then sued her assignees for the property. There was no evidence that the widow had ever indicated any intention to make the property part of her husband's estate for the benefit of his heirs. Held that there was no presumption that the widow intended to part with her power of disposition for the benefit of her reversionary heirs. The acquirer of property presumably intends to retain dominion over it, and in the case of a Hindu widow the presumption is none the less so when the fund with which the property is acquired is one which, though derived from her husband's property, was at her absolute disposal. Inasmuch as the widow's absolute power of disposition over the income derived from the widow's estate is now fully recognized, she will be presumed, in the absence of an indication of her intention to the contrary, to retain the same control over the investment of such income. Nor is that presumption affected by the fact that properties thus acquired by her are managed and enjoyed by her, without any distinction, with properties inherited from her husband. She is the

5. ———— *Enfranchisement of land in favour of widow as personal immovable land—Lease by widow—Sale of the land by her reversioners—Validity of lease—Title of purchaser—Certain land had been enfranchised in favour of a Hindu*

HINDU LAW—WIDOW—continued,**2. POWER OF WIDOW—continued.****POWER OF DISPOSITION OR ALIENATION—continued.**

property until the termination of her widowhood. ———— to the period If the

of adoption, in the adopted son, as a vested remainder to fall into possession at the termination of the

7. ———— *Alienation by one of two co-widows—Effect on the inheritance and on the interest of the alienor—Though one of two co-widows, who is not the managing member on behalf of both, cannot charge the inheritance even where the transaction is for the benefit of the estate, an alienation by her will bind her own interest in the property during her life-time* VADALI MAMIDRAGU v. KOTIPALLI RAMAYYA (1902)

[I. L. R., 28 Mad., 334]

8. ———— *Lease—Limitation—Hindu*

executed by her, is governed by Art. 91, and not by Art. 141, of Sch. II to the Limitation Act

9. ———— *Mital shara—Property given or devised to wife by husband—Widow's powers of alienation.—Held that, under the Hindu law, in the*

son, the son cannot sue to recover possession of the

HINDU LAW—WIDOW—concluded.**2. POWER OF WIDOW—concluded.****POWER OF DISPOSITION OF ALIENATION—concluded.**

case of immovable property given or devised by a husband to his wife, the wife has no power to alienate unless such power is conferred by express terms.

3. DECREES AGAINST WIDOW, AS REPRESENTING THE ESTATE, OR PERSONALLY.

10.—Sale of widow's estate—Right, title or interest of widow, when passes, and when complete estate passes, by sale in execution of decree—The question whether, upon an execution-sale, the mere right, title or interest of a Hindu widow or the

4. DISQUALIFICATIONS**RE-MARRIAGE**

11.—Inheritance—Succession to a son of first marriage, notwithstanding re-marriage—Hindu Widows' Re-marriage Act (XV of 1856), ss. 2, 5—The widow of a Hindu married a second time. Subsequently to her re-marriage, her son has been

HINDU LAW—WILL—continued.**—construction of wills—**

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . . . 5 C. W. N., 300

See SUCCESSION ACT, s. 96.

[I. L. R., 24 Mad., 289]

—nuncupative will—

See PROBATE—OF WHAT DOCUMENTS GRANTED . . . I. L. R., 25 All., 313

1. CONSTRUCTION OF WILLS.**(a) ESTATES ABSOLUTE OR LIMITED.**

1.—Direction as to management of endowment by testator's daughter and her husband and their

daughter in succession. On the death of the last surviving son of his daughter, the succession of *se-basts* failed, and the *se-bastship* reverted to the heirs of the testator. GORAL CHUNDER BOSE v. KARTICK CHUNDER DEY (P.C., 1902)

[I. L. R., 29 Calc., 718]

2.—Mitakshara School—Request of estate of**HINDU LAW—WILL.**

Col.

1. CONSTRUCTION OF WILLS—

(a) ESTATES ABSOLUTE OR LIMITED. . . . 472

(b) ADOPTION 473

(c) REQUEST TO IDOL 474

(d) VESTED AND CONTINGENT

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[I. L. R., 26 Bom., 267]

HINDU LAW—WILL—continued**1. CONSTRUCTION OF WILLS—continued.****(a) ESTATES ABSOLUTE OR LIMITED—concluded.**

the said *gaddi*, was not void by reason of the ignorance of the parties as to the effect of certain inoperative clauses of the Will regarding perpetuity and

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son of the *gaddi* was
be obtained by

(1900),
RAMSHWAR PRASAD SINGH v. LACHMI PRASAD
SINGH (1903) 7 C. W. N., 688

(b) ADOPTION

3.—*Bequest to testator's adopted son, not conditional on adoption having taken place*—A testator stated in his Will that he had been keeping a minor as his adopted son, and recited, in a bequest of property

expression that the
minor as his adopted son meant keeping him with a
view to his adoption, and that the bequest to the

4.—Hindu widow—Testator—Alienation—Ad-

tion from such administra-

(1901) I. L. R., 20 Cal., 200

HINDU LAW—WILL—continued.**1. CONSTRUCTION OF WILLS—continued.****(b) ADOPTION—concluded.**

5.—*Construction of document—Document of a testamentary nature—Declaration made in wajib-ul-arz, by the sole proprietor of a village, as to his wishes respecting the devolution of the property after his death*—The sole proprietor of a certain village caused the following entry to be recorded in the village *wajib-ul-arz*: "I am the only *zamindar* in this village I am a Marwari Brahmin Seven years ago I adopted my sister's son, Marli. He is my heir and successor (*malik*). If, after this agreement, a son is born to me, half the property would be received by him and half by the adopted son. If more than one son be born to me, the property would be equally divided among them, including the adopted son, as brothers. I have two wives now. They will receive their maintenance from him (Marli)." A son was born to the person making this declaration, but he died before the plaintiff's suit was instituted. As to the adoption of Marli, it was found that, although Marli had been brought up by his alleged adoptive father, and more or less treated by him as his son, it was not satisfactorily proved that there had been any valid adoption, even if such adoption were legally possible. Held that the declaration in the *wajib-ul-arz* above

(c) BEQUEST TO IDOL

6.—A bequest to an idol not in existence at the time of the testator's death is void. *NOORNDRA NANDINI DASSI v. ENOY KRISHNA DEB* (1902)

[I. L. R., 30 Cal., 521, a.c., 7 C. W. N., 121]

(d) VESTED AND CONTINGENT INTERESTS.

7.—*Words of inheritance—O putra pautradi, meaning of—Hindu widow's estate—Estate for life—Intention of the testator—Power given to adopt, effect of—A Will contained, amongst others, the following directions: "After my death, my widow, being in possession for the term of her natural life (jabat jiban) of my properties, shall perform the Iskar Seba and other rites. My widow shall have*

(1901) I. L. R., 20 Cal., 200

HINDU LAW—WILL—concluded.**1. CONSTRUCTION OF WILLS—concluded.****(d) VESTED AND CONTINGENT INTERESTS—concluded.**

widow's estate, but an ordinary life estate. The brother's son took a vested estate of inheritance, subject to the widow's life estate, and only liable to be divested by the widow's adoption of a son. The widow not having adopted any son, the brother's son took the ultimate estate absolutely, and his sons would inherit equally, though some of them were not born at the time of the testator's death. *GOOROO DAS MUSTAFI v. SARAT CHUNDER MUSTAFI* (1902)

[I. L. R., 29 Cal., 699; s.c., B. C. W. N., 721]

2. REVOCATION OF WILL.

S. — Mitakshara — Inheritance — Two grandsons through the same daughter take as joint ancestral estate — Practice — Costs of printing record.

recovered, and executed a power-of-attorney appoint-

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[I. R., 29 I. A., 156;
s.c., I. L. R., 25 Mad., 678; 7 C. W. N., 1]

HINDU WIDOW.

See **HINDU LAW—WIDOW.**

HOSPITAL, REQUEST TO.

See **WILL—CONSTRUCTION—CHARITABLE GIFT** 6 C. W. N., 321

HUNDI.

Col.

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1. ACCEPTANCE.

1. — Acceptance of hundis conditional or absolute payment — In a suit for the amount due on account of goods sold and delivered and money lent, the defence was that plaintiff had accepted hundis in discharge of the debt and was in consequence

HUNDI—continued.**1. ACCEPTANCE—concluded.**

of 2½ per cent. and that, in consequence, plaintiff had no cause of action, either on the original debt or upon the *hundi*, as he had taken the risk of the latter

2. ENDORSEMENT.

2. — Shakhje hundi — Endorsee for realization — Effect of such endorsement — Maintainability of a suit by such endorsee for realization — Delivery,

and sent by him to the plaintiffs. The plaintiffs handed the *hundi* to one S, the plaintiffs' *jemadar*, who had been in the habit of taking *hundis* on their behalf for acceptance and payment, to be taken by him to the defendants for acceptance. S took the

triff's signature to it, and obtained payment. The defendants, before such payment, had made no inquiries as to the position or respectability of S, and paid the *hundi* on the faith of the forged signature. Held that such an endorsement, coupled with the delivery of the *hundi*, entitles the plaintiffs to sue for and receive payment of the *hundi* from the acceptors, though as between the drawer and the plaintiffs the latter are mere agents or parties with a defensible title. Such an endorsement is in the nature of a restrictive endorsement, giving the endorsee the right to receive payment of the *hundi* and if necessary to sue the acceptor for the amount, but not to transfer his rights as endorsee to anybody else; any defence which would be available to the acceptor against the drawer would be available against the endorsee. A *hundi* payable *shakhje* is only

same
Futt
The
endorsement *Gones Dass v. Luchmi Narayan* (1893),
I. L. R., 19 Bom., 570, referred to *Held*, also, that

HUNDI—concluded.**2. ENDORSEMENT—concluded.**

made to them. *Roberts v. Tucker* (1851), 16 Ad. and El. 560; *Bank of Ireland v. Trustees of*

*such a bill would not, merely by delivery to a respectable holder. *Gouras-mull v. Dhanuk Das* (1863), 7 B. L. R., 293, foot-note, and *Thakurdass v. Futtah Mull* (1871), 7 B. L. R., 275, referred to *Bhurettam v. Hari Prato Coaker* (1900). 5 C. W. N., 313*

3 NOTICE OF DISHONOUR

informed, not only that the instrument has been dishonoured, and in what way, but also that he will be held liable thereon. So, where a drawee of a bill of exchange does not accept it, though the drawer is primarily liable, the payee should give notice of dishonour to the drawer. *Jambu Chetty v. Palakkiappa Chettiar* (1902) 1 I. L. R., 28 Mad., 526

dishonour was given to the drawer, or that he (the drawer) did not suffer any damage for want of such a notice. *Krishnaseth Bin Ganesh Shetye v. Har Pal; Bhatye* (1895), 1 I. L. R., 20 Bom., 439, and *Moti Lal v. Moti Lal* (1883), 1 I. L. R., 6 All., 76, referred to. *Amiruddi Bexant v. Bahadur Khan* (1903)

[1 I. L. R., 30 Cal., 977; a.c., 7 C. W. N., 878]

HURT.**GRIEVOUS HURT**

—Penal Code (Act XLV of 1860), ss 304, 149, 326—Commitment for offences of rioting and culpable homicide not amounting to murder—Constructive guilt of members of unlawful assembly—Grievous hurt, whether it may be regarded as a

HURT—concluded.**GRIEVOUS HURT—concluded.**

grievous hurt is not a minor offence or an offence involved in the offence under s 304 (culpable homicide

the event of the charges not being sustainable, be convicted of an offence under a 326, Indian Penal Code s 304 of the Penal Code, read with s 149, applies only to persons who, though not taking an active part in an unlawful assembly, are liable to

[6 C. W. N., 98]

HUSBAND AND WIFE.**See ADULTERY**

See DEFAMATION—IMPUTATION ON A WIFE. 1 I. L. R., 25 Bom., 151

See DIVORCE ACT.**See HINDU LAW—****HUSBAND AND WIFE;
MARRIAGE.**

See LIMITATION ACT, 1877, SCH. II, ART. 35. 1 I. L. R., 25 Bom., 844

See RESTITUTION OF CONJUGAL RIGHTS.**—maintenance—**

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION, AND POWERS OF COURT. [1 I. L. R., 26 Bom., 707]

—suit for possession of wife—

See COURT-FEES ACT (VII of 1870) [1 I. L. R., 28 Cal., 587]

—Execution of document by pressure and concealment of material facts—Trustee and cestui que trust—Independent advice—Where a husband obtained the execution of a deed by his wife, creating a charge over her separate property, by concealment of material facts: Held that the deed was not binding on the wife. *TURNBULL & Co v DUVAL* (2 C., 1902). 8 C. W. N., 809

I**IDIOTCY.****See INSANITY.****IDOL.****—bequest to—**

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—BEQUEST TO IDOL.

INCOME TAX ACT (II OF 1886)—
*concluded.***—s. 47—concluded**

of a company or a firm, and not to the case of an individual carrying on business **HADJER AJAM GOLAM HOSSAIN v. SECRETARY OF STATE FOR INDIA IN COUNCIL (1901)** 5 C. W. N., 257

INCONTINENCE.

See **UNCHASTITY.**

INCORPOREAL RIGHT.

See **SPECIFIC RELIEF ACT (I OF 1877), s. 9** I. L. R., 29 Calc., 614

INCUMBRANCES.

See **SALE FOR ARREARS OF RENT—INCUMBRANCES.**

See **SALE FOR ARREARS OF REVENUE—INCUMBRANCES.**

See **SALE IN EXECUTION OF DECREE—IMMOVABLE PROPERTY.**

[5 C. W. N., 497]

INDECENCY.

See **SECURITY FOR GOOD BEHAVIOUR.**

[I. L. R., 30 Calc., 366]

INDIAN COUNCILS ACT, 1861 (24 & 25 VICT., c. 67).

See **BOMBAY CITY IMPROVEMENT ACT.**

[I. L. R., 27 Bom., 424]

—s. 42; power of Indian Legislatures to affect the prerogative of the Crown—

See **MADRAS CITY MUNICIPAL ACT, s. 341.**

[I. L. R., 25 Mad., 457]

INDIAN COUNCILS ACT, 1892 (55 & 56 VICT., c. 14).

—s. 5—

See **BOMBAY CITY IMPROVEMENT ACT.**

[I. L. R., 27 Bom., 424]

INDICTMENT.

See **CHARGE**

INFANT.

See **GUARDIAN.**

See **MINOR.**

INFLUENCE.

See **UNDUE INFLUENCE.**

INFORMATION OF COMMISSION OF OFFENCE.

1.—First information—Criminal Procedure Code (Act V of 1898), s. 154.—Where, upon information received, from the chaukidar of the offence (and which information was duly recorded in the Station Diary), the Sub-Inspector had gone to the Hospital to see the wounded man, and had there recorded the statement made by him: *Held* that this record of such statement can in no sense be

2.—Criminal Procedure Code, s. 154—First information, when should it be recorded—Police officer's memorandum, in addition to entry in the diary.—Information on which an investigation has commenced is the first information of the occurrence. The law does not contemplate that when, in the course of the investigation, something has been elicited, a first information can thereupon be recorded. In every trial it is important that it should be known to the judicial officer what are the facts given out immediately after the occurrence and recorded in the station diary.

INHERITANCE.

See **HEREDITARY OFFICES ACT (BOMBAY ACT III OF 1874), ss. 4, 11**

[I. L. R., 25 Bom., 470]

See **HINDU LAW—**

CUSTOM—INHERITANCE AND SUCCESSION;

INHERITANCE;

STRIDHAN—DESCRIPTION AND DEVOLUTION OF STRIDHAN;

WIDOW—INTEREST IN ESTATE OF HUSBAND—BY INHERITANCE.

See **MAHOMEDAN LAW—INHERITANCE.**

See **MALABAR LAW—INHERITANCE**

—forfeiture of—

See **HINDU LAW—**

INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE;
WIDOW—DISQUALIFICATION.

—Inheritance, partial acceptance or renunciation of.—Liability of heirs for rent.—There cannot be a partial acceptance or renunciation of an inheritance, nor can one of several heirs accept a part only of an inheritance, to the prejudice of the other heirs and of the creditors of the deceased. An acceptance in part has the effect of an acceptance of the whole,

INHERITANCE—concluded.

and carries with it the same liability. If a person accepts the inheritance, in whole or in part, he is bound to discharge the liabilities which attach to the late tenants from whom he inherits, unless he can prove that he has since made a formal surrender of the holding to the landlord *MOAZAM HASSAN CROWDHURST v. BROODIN* (1900)

(5 C. W. N., 189)

INITIALS.

See **WARRANT OF ARREST—CRIMINAL CASES** . . . 5 C. W. N., 447

INJUNCTION.

1. UNDER CIVIL PROCEDURE CODE . . . Col 485
2. SPECIAL CASES—

- (a) BREACH OF AGREEMENT . . . 437
- (b) BUILDING "
- (c) CUTTING TREES "
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3. DISOBEYANCE OF ORDER FOR INJUNCTION "
4. REFUSAL OF INJUNCTION "

See **LIMITATION ACT, 1877, SCH. II, ART. 42.** . . . I. L. R., 24 All., 146

See **RAILWAY COMPANY.**
[I. L. R., 27 Bom., 344]

See **RIGHT TO USE OF WATER**
[I. L. R., 29 Calc., 100
" 30 Calc., 281]

—enforcement of—

See **EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.**
[I. L. R., 26 Bom., 283]

—ex parte—

See **BOMBAY CITY IMPROVEMENT ACT.**
[I. L. R., 27 Bom., 424]

—right to use of water—

See **EASEMENT** . I. L. R., 30 Calc., 1077

—to restrain levy of tax—

See **BOMBAY DISTRICT MUNICIPAL ACT (BOMBAY ACT III of 1901), ss. 82(c) AND III** . I. L. R., 37 Bom., 403

—valuation of suit for—

See **COURT-FEES ACT (VII of 1870), s. 7, CL IV (d)** . I. L. R., 24 Mad., 34

1. UNDER CIVIL PROCEDURE CODE.

1.—**Temporary Injunction—Civil Procedure Code (Act XIV of 1882), s. 493—Specific Relief**

INJUNCTION—continued.**1. UNDER CIVIL PROCEDURE CODE—concluded.**

Act (I of 1877), ss. 54, 56, 57—Breach of negative covenant—Plaintiffs advanced money to the defendants for the purpose of carrying on work in certain mica mines, in pursuance of an agreement by which defendants undertook, in consideration of the advance, to send all the mica produced from the mines to plaintiffs, and bound themselves not to send any of it to any firm other than plaintiffs, or keep any in stock. Plaintiffs now complained that defendants had, in breach of their agreement, arranged to consign, and had already made consignments of, mica to

Mervani Panday v. Gordon, I. L. R., 6 Bom., 266, referred to. SUBBA NAIDU v. HAJI BASHA SAKHA (1902) . . . I. L. R., 28 Mad., 188

2.—**Temporary injunction to restrain suit brought by defendant in the Small Causes Court—Civil Procedure Code (XIV of 1882), ss. 492, 493—Specific Relief Act (I of 1877), ss. 53, 54 and 56.**—In a suit by plaintiffs in the High Court to recover damages for breach of contract, they sought to obtain an interlocutory

temporary or interlocutory injunctions are not the same as those under the Judicature Act, 1873, s. 25, sub-cl. 8. As the injunction asked for is a perpetual one, it can, under the Specific Relief Act, only be granted by the decree made at the hearing. *JAJRAMDAS GANESHIDAS v. ZAMONZAL KESORIBAL (1903)* . . . I. L. R., 27 Bom., 357

3.—**Civil Procedure Code, s. 492—Act IX of 1873 (Indian Contract Act), s. 23—Held that an alienation made pending a temporary injunction under s. 492 of the Code of Civil Procedure is not void under either s. 23 of the Indian Contract Act, 1872, or any other law.** *Delhi and London Bank, Ltd v. Ram Narain (1887), I. L. R., 9 All., 497, followed. MANOHAR DAS v. RAM ATAR PANDU (1903)*

[I. L. R., 25 All., 431]

INJUNCTION—continued.

2. SPECIAL CASES.

(a) BREACH OF AGREEMENT.

4.—Civil Procedure Code (Act XIV of 1892), s. 493—Temporary injunction—Specific Relief Act (I of 1877), ss. 54, 55, 57—Breach of negative covenant—Injunction.—Plaintiffs advanced money to the defendants for the purpose of carrying on work in certain mining area.

from the mines to plaintiffs and bound themselves not to spend any of it in any other way.

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is a matter of judicial discretion. Whether the principles which govern the grant of a temporary injunction under the Code of Civil Procedure are the same as those which are laid down in the Specific Relief Act relating to the grant of a perpetual injunction—*quere*. *Nusserwanji Merwanji Panday v. Gordon*, 1 L. R., 6 Bom., 266, referred to. *SUBBA NAIDU v. HAJI BADSHA SAHIB* (1902). I. L. R., 28 Mad., 168

(b) BUILDING.

5.—Temporary injunction—Damages.—Where a plaintiff sued the defendant for a perpetual injunction restraining him from building a house on a parcel of land alleged to be within the plaintiff's

(c) CUTTING TREES.

6.—*Maxim: Quis est solum efus est aque ad celum*—Question whether common law rights of owner can be limited by religious prejudices of neighbours.—Certain plaintiffs sued for an injunction restraining defendants from obstructing them in cutting certain branches of a *pipal* tree overhanging

INJUNCTION—continued.

2 SPECIAL CASES—continued.

(c) CUTTING TREES—concluded.

their property. The *pipal* tree grew in the inclosure of a temple, and the resistance was based on the ground that the tree was an object of veneration to Hindus, and that the lopping of its branches would be offensive to the religious feelings of the Hindu community. *Held* that the plaintiffs were entitled to the injunction prayed for, and that the fact that the plaintiffs' action might cause annoyance to a large number of Hindus was not a sufficient ground for cutting down the well-recognised common law rights of an owner of property. *BEHARI LAL v. GHISA LAL* (1902). I. L. R., 24 All., 489

(d) OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY.

from erecting a certain door. The plaint also contained a prayer for "such other relief as the Court might think fit." After filing the plaint, the

decree, and remanding the case) lost on the suit as framed the Court could grant a mandatory injunction for the removal of the door. The suit was rightly framed in the light of the circumstances which existed when it was brought. It was the defendant's subsequent conduct which rendered it necessary that the plaintiff should be given, as prayed for in his plaint, such other relief as the Court might think fit. *MAGANLAL PUNJASA v. CHHOTALAL GHELA* (1901). I. L. R., 28 Bom., 136

8.—Possession of property—Practice—Procedure—Fact alleged by plaintiff and not denied in defendant's written statement or at hearing—Presumption—Repeated violation of legal right—Damages—Adequate remedy—Specific Relief Act (I of 1877), s. 54—In a suit pray-

Repeated violation of an established legal right cannot in ordinary cases be adequately met by damages.

INJUNCTION—concluded**2. SPECIAL CASES—concluded****(d) OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY—concluded.**

nor can these damages be satisfactorily ascertained.
APAJI PATIL v APA (1902)

[I. L. R., 28 Bom., 735]

(e) POSSESSION OF JOINT PROPERTY

9.—Specific Relief Act (I of 1877), s. 51—Judicial discretion of Court—Where the act of the defendant amounts to an ouster of the plaintiff from the possession of the joint property—In a case where the act of the defendant amounts to an ouster of the plaintiff from the possession of joint property, pecuniary compensation not being an adequate relief, an injunction would be the proper remedy.
I. L. E.,
GHOSE v.

3. DISOBEDIENCE OF ORDER FOR INJUNCTION

10.—Perpetual injunction—Disobedience to order—Contempt of Court—Second suit for injunction—Res judicata—Act XV of 1877 (Indian Limitation Act), Sch. II, Art. 179—Limitation—Where a plaintiff has once sued for and obtained a perpetual injunction directing the defendant to refrain from certain acts, it is not necessary for the plaintiff, if in future the defendant ignores

4. REFUSAL OF INJUNCTION

11.—Execution—Decree restraining defendant in user of land—Sale of land in execution of another decree—Purchaser at such sale in possession—No execution granted of former decree—The plaintiff obtained a decree restraining the defendant in his user of certain land, and applied for execution. Meanwhile the land had been sold in execution of another decree against the defendant, and the

INJURY.

See CRIMINAL INTIMIDATION.

[I. L. R., 30 Calc., 418]

See DAMAGES—SUITS FOR DAMAGES—TORT.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—SUBSTANTIAL INJURY,

—or obstruction to rights of property—

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY.

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.

INQUIRY.

See FURTHER INQUIRY.

—before granting certificate to collect debts—

See SUCCESSION CERTIFICATE ACT (VII OF 1889), s. 7 . . . 5 C. W. N., 494

—as to value of property, before granting probate or letters of administration—

See COURT-FEES ACT (VII OF 1870), s. 19H . . . 6 C. W. N., 898

INSANITY.

See LUNATIC.

1.—Insane delusion—Unsoundness of mind—Criminal liability, test of—Penal Code (Act XLV of 1860), s. 84—Whether a person who, under an insane delusion as to the existing facts, commits an offence in consequence thereof, is to be therefore excused, depends on the nature of the delusion. If he labours under a partial delusion only, and is not in

INSANITY—concluded.

2.—Voluntary drunkenness—Murder—
Unsoundness of mind—Disease brought on
by voluntary drunkenness—Criminal liability—
Penal Code (Act XIV of 1860), ss. 84, 85 and
800

Code, such incapacity is no defence, if produced by
voluntary drunkenness. If, however, voluntary
drunkenness causes a disease which produces such
incapacity, then s. 84 applies, though the disease may
be of a temporary nature. *EMPEROR v. BHELEKA
AHAM* (1902)

[I. L. R., 28 Cal., 498; s.c. 6 C. W. N., 506]

INSOLVENCY

Col.

1. CLAIMS OF ATTACHING CREDITORS
AND OFFICIAL ASSIGNEE . . . 491

2. INSOLVENT DEBTORS UNDER CIVIL
PROCEDURE CODE . . . 493

See APPEAL—ORDERS—**ORDER IN INSOLVENCY;**

[I. L. R., 23 All., 56]

**ORDER REFUSING APPLICATION TO
BE DECLARED INSOLVENT.**

[I. L. R., 27 Bom., 604]

See INSOLVENT ACT (11 & 12 VICT.,
c. 21).

**—effect of insolvency proceedings in
French territory—**

See JURISDICTION—CAUSES OF JURIS-
DICTION—CAUSE OF ACTION—PRINCIPAL
AND AGENT . I. L. R., 26 Mad., 544

**1. CLAIMS OF ATTACHING CREDITORS
AND OFFICIAL ASSIGNEE.**

1.—Charge on debts—Civil Procedure Code
(Act XIV of 1852), s. 872—Devolution of interest
of judgment-debtor upon Official Assignee.—In
March, 1897, B covenanted to repay by instalments
a sum of money owing by him to plaintiff, and
mortgaged his stock-in-trade and all outstandings
and moneys then due and owing and thereafter to
become due and payable to him. B remained in
possession. In July, 1899, plaintiff sued B on the
mortgage-deed. In August, 1899, upon an *ex-parte*
application by the plaintiff, an order by way of
injunction was made in the suit, restraining the
mortgagor from disposing of the stock-in-trade and

INSOLVENCY—continued.**1. CLAIMS OF ATTACHING CREDITORS AND
OFFICIAL ASSIGNEE—continued.**

outstandings and debts payable to him. This in-
junction was subsequently dissolved. In the same
month plaintiff gave notice to a person indebted to
B that plaintiff claimed the amount of the debt
under his mortgage. In September, 1899, B was
adjudged an insolvent, and the usual vesting order
was made. In October, 1899, plaintiff obtained a
decree in his suit, by which it was ordered that B
should pay the principal and interest due under the
mortgage-deed, and that in default of payment the
mortgaged premises should be sold. In February,
1900, the person indebted to B paid the amount of
his debt to the Official Assignee. In September,
1900, an order was made in plaintiff's suit against
the insolvent, directing that the decree should be
executed by the attachment of the money in the
hands of the Official Assignee. In December, 1900,
plaintiff applied by summons in his suit against the
insolvent for an order that the Official Assignee
should pay over that money. Held that plaintiff
was not entitled to the order. The decree, as a
mortgage decree directing the sale of the chattels,

have him joined as a party to the suit. *MILLER v.
RUDH SINGH DUDHURIA*, I. L. R., 18 Cal., 43,
referred to. *PUNNTIAVELU MUDALIAR v.
BRASHTAN ATTANAR* (1901)

[I. L. R., 25 Mad., 406]

2.—Act for the Relief of Insolvent Debtors (11
& 12 VICT., c. 21), s. 7—Vesting order, effect
of—Prior attachment by a judgment-creditor—
Attachment, effect of—Civil Procedure Code
(Act XIV of 1852), s. 295—Civil Procedure
Code (Act VIII of 1859), s. 270—A judgment-
creditor has no priority over the Official Assignee in
respect of property attached by him previous to the
passing of the vesting order. *Soodul Chander
Law v. Russick Lal Mitter* (1885), I. L. R., 15
Cal., 202, approved. *A. B. Miller v. Lakshmi-
Debi* (1901), 5 C. W. N., 761, overruled. *Anand
Chandra Pat v. Panchi Lal Sarma* (1870), 5 B. L.
R., 691, and *Shib Krieto Shaha Choudhry v.
Kishan Chand Golecha* (1883), I. L. R., 10
Cal., 150, distinguished. An attachment does not
confer any title; it merely prevents alienation.
Moti Lal v. Karabuldin (1897), I. L. R., 25
Cal., 179, referred to. *PEAROCK v. MADAN GOPAL*
(1902)

[6 C. W. N., 577; s.c., I. L. R., 29 Cal., 423]

INSOLVENCY—continued**1. CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE—concluded.**

■—*Civil Procedure Code (Act XIV of 1882), ss. 268, 453—Attachment of money before judgment—Decree—Subsequent insolvency of judgment-debtor—Claim of Official Assignee—Priority of Official Assignee.*—The effect of an attachment under the Code of Civil Procedure is to prevent alienation. It does not confer title. An order of attachment under s. 268 only operates so as to give the judgment-creditor certain rights in execution. It does not operate, when those rights are not exercised before the presentation of a petition

effect as against him, and making that it, and the order set aside. Held that the Official Assignee was entitled to the order asked for. **KRISHNASAMY MUDALIAR v. OFFICIAL ASSIGNER OF MADRAS** (1903) . . . I. L. R., 28 Mad., 673

2. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

4.—*Application for declaration of insolvency—Civil Procedure Code, s. 344—Who may apply for declaration of insolvency—Judgment-debtor arrested or imprisoned.*—Held that s. 344 of the Code of Civil Procedure does

5.—*Arrest—Civil Procedure Code (Act XIV of 1882), ss. 336, 344—Arrest of judgment-debtor—Petition under s. 368—Release on furnishing security to apply to be declared insolvent within a month—Failure to apply within that time—Subsequent application under s. 344—Maintainability.*—A judgment-debtor, who had been arrested, was released under s. 366 of the Code of Civil Procedure on furnishing security that he would, within one month, apply to be declared an insolvent. The month passed, and he failed to make the application. He was not arrested again, and, at a subsequent date, applied under s. 344 to be declared an insolvent. Held that he was entitled to do so. **ALAGAPPA CHETTI v. SARATHAMMAL** (1902) . . . I. L. R., 25 Mad., 724

INSOLVENCY—continued.**2. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—continued.**

6.—*Examination of insolvent—Civil Procedure Code (Act XIV of 1882), ss. 345, 346 and 350.*—The examination of an insolvent under s. 350, Civil Procedure Code, is only necessary where the judgment-debtor is declared an insolvent upon his own application, not where he is adjudicated an insolvent at the instance of the judgment-creditor. **GOVRI KANT BURMAN v. DANODAR DAS BURMAN** (1900) . . . 5 C. W. N., 90

7.—*Notice of insolvency—Civil Procedure Code (Act XIV of 1882), ss. 347, 350, 351, 353 and*

claim by a—Onus of proving claim when so required under s. 353, Civil Procedure Code—Receiver in insolvency, purchase by.—The provision of s. 347 with regard to posting up the notice of

judgment-creditor. An adjudication order can only be set aside on the ground that it has been obtained by a fraudulent representation of indebtedness in favour of the creditor, who has obtained the order when there is no debt whatsoever, or for want of jurisdiction. When charges of fraud and collusion are made, they must be put in a sufficiently specific manner to enable the other side to combat them. **WALLINGFORD v. THE MUTUAL SOCIETY** (1881), 5 App Cas., 697, and **Ganga Narain Gupta v. App Cas.**, 697, and

8.—*Schedule—Execution of decrees—Civil Procedure Code (Act XIV of 1882), s. 357—Debt not included in the Schedule—Insolvent debtor, discharge of—Right of creditor, not in the Schedule—Insolvent debtor's property—*

INSOLVENCY—concluded.**2. INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE—concluded.**

the Code of Civil Procedure, is entitled to proceed

vested in a Receiver, he having taken insolvency proceedings, the execution could not be carried on, the Court released from attachment the salary of the

case was governed by Art. 174 of the Limitation Act, and in continuation having been when the decree-holder became entitled to ask the

such decree was that provided for by Art. 174, sub.

Ahsan (1994), I. L. R., 16 All., 237, referred to. ASHRAFUDDIN AHMED v. BEHIN BHARI MULLICK (1932) I. L. R., 30 Calc., 407

INSOLVENT ACT (11 & 12 VICT., c. 21).

1.—Priority of Official Assignee—Decree, attachment in execution of—Vesting order—Official Assignee—Priority of claim—Civil Procedure Code (Act XIV of 1952), s. 244—Whether Official Assignee is the representative of the judgment-debtor.—A vesting order made under the Insolvency Act (11 & 12 Vict., c. 21) has not the effect of giving the Official Assignee priority over the claim of a judgment-creditor in respect of property attached, at his instance, previous to the

INSOLVENT ACT (11 & 12 VICT., c. 21)
—continued.

passing of such order. *Anand Chander Pal v.*

[I. L. R., 28 Calc., 419;
s.c., 5 C. W. N., 781]

2.—Second insolvency—Insolvency—Second insolvency where insolvent has not got final discharge under the first—Duty of serving notices, when on the insolvent and when on the creditors—Practice—Procedure.—A person may become insolvent a second time before he has received his final discharge under the first insolvency. *Morgan v. Knight* (1864), 33 L. J. (C. P.), 168, followed. The appellant had been adjudicated an insolvent at the instance of a creditor, under s. 11 of the Indian Insolvent Act (11 & 12 Vict., c. 21), on the 21st January, 1898. On the 4th October, 1900, one of his creditors obtained a rule calling upon the insolvent to show cause why he should not forthwith proceed with the matter. The Commissioner made the rule absolute, and directed the insolvent forthwith to proceed with the matter of his insolvency. On appeal: Held that the order of the lower Court should be reversed, and the rule discharged. When a person himself files a petition in insolvency, he has the carriage of it. He must serve notices on the creditors at his own expense, and bring the petition to a hearing. But when a person has been adjudicated an insolvent at the instance of a creditor, it is

—s. 7—

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE,
[6 C. W. N., 577]

—ss. 7 and 30—

1.—Ancestral trade carried on by brothers in undivided family—Insolvency and discharge of all the adult members—Minor son of one brother not a party to insolvency proceedings—Order vesting family property in Official Assignee—Sale by Official Assignee of land so vested—Subsequent suit against minor—Sale of his interest in the land—Validity.—Seven brothers who carried on a business (which had previously been conducted by their family for very many years) applied to be adjudged insolvents in the Court for the relief of insolvent debtors in Madras. They comprised all the adult members of the family at the time when the application was made, and all the debts included in their schedule had been incurred in connection with the family business. A, being a son of one of them and a minor at the time, was not a party to the insolvency proceedings. The applicants in due course

INSOLVENT ACT (11 & 12 VICT., c. 21)

—continued

—ss. 7 and 30—continued

obtained their discharge, and an order was passed vesting their property (which included land) in the Official Assignee in Madras. At a date subsequent to that of the vesting order, plaintiffs purchased

brought to sale and purchased by B. Upon a suit being brought by plaintiffs for a declaration that the purchase by B was inoperative and void by reason of the prior sale to plaintiffs by the Official Assignee: *Held* that plaintiffs were entitled to the declaration. *Held, also*, that, inasmuch as the trade was an ancestral one and not one commenced by the managing members during the minority of A, and as the scheduled debts were incurred in the course of such trade, and all the adult members had applied

or the existence of family necessity. In cases in which s. 7 of the Indian Insolvent Debtors Act applies, the vesting order vests in the Official Assignee only the real and personal estate and effects of the insolvent and not the interest in the same.

considered *NUYNA BRAHMATTA SETTI v. CHIDARABOTINA VENKATASWAMY* (1902)

[I. L. R., 28 Mad., 214]

2.—*Provident Funds Act (IX of 1897), s. 4—Insolvent Debtors' Act (11 & 12 Vict., cap. 21), ss. 7, 30—Vesting order—Sum due to an insolvent from a provident institution—Right of Official Assignee to claim—Construction of statutes—Distinction between enactments affecting vested rights and those regulating procedure—A member of a Railway Provident Institution, who had made compulsory deposits therein, became insolvent, and the usual vesting order was made under s. 7 of the Act for the Relief of Insolvent Debtors. By the rules of that institution, a member is to be paid, on*

INSOLVENT ACT (11 & 12 VICT., c. 21)

—continued.

—ss. 7 and 30—concluded.

into force the interest of the insolvent in the Fund had become vested in the Official Assignee: *Held* that, by s. 4 of the Provident Funds Act, all the right and title of the Official Assignee was determined

affect procedure, recognised. *Javanmal Jital v. Muktabai, I. L. R., 14 Bom., 516*, referred to. Under s. 7 of the Insolvent Debtors Act, the right of the insolvent to be paid the sum standing to his credit in the Fund, on his retirement from service, vested in the Official Assignee. *OFFICIAL ASSIGNEE OF MADRAS v. DALGAIRNS* (1902)

[I. L. R., 28 Mad., 440]

—s. 8—

—*Adjudication of insolvency—Who is entitled to apply for order of adjudication—Condition necessary for adjudication under section 8*

—*Practice—Procedure—The only person who can obtain an order adjudicating another person insolvent under s. 8 of the Indian Insolvent Act (11 & 12 Vict., c. 21), on the ground of his lying in prison for twenty-one days in execution of a decree, is the creditor in execution of whose decree he has been in prison. A debtor cannot be adjudicated an insolvent under s. 8 of the Indian Insolvent Act (11 & 12 Vict., c. 21) on the ground of his lying in prison for twenty-one days, unless he is in prison at the time the petition for adjudication is presented or at the time it is heard. IN RE AHMED ISMAIL MUNSHI* (1902)

[I. L. R., 28 Bom., 649]

—s. 9—

—*Insolvency—Trust deed for benefit of creditors—Act of insolvency—An assignment by*

9 of the 21), and under

KANKUCHAND (1902) . I. L. R., 28 Bom., 478

—ss. 9 and 24—

—*Insolvency—Composition deed—Assignment of all property for benefit of creditors—Act of insolvency—Assignment void against Official Assignee—By a composition deed dated the 7th October, 1901, A and B assigned the whole of their*

This deed (1902), I. L. R., 26 Bom., 476, to be an act of insolvency under s. 9 of the Indian Insolvent Act (11 & 12 Vict., c. 21), and, on the 11th December, 1901, A and B were adjudged insolvents on the application of certain creditors who had not signed the said deed. Held that, even assuming

INSOLVENT ACT (11 & 12 VICT., c. 21)

—continued.

—ss. 23 and 24—concluded.

that the deed of assignment was not voluntary within the meaning of s. 24 of the Indian Insolvent Act, nevertheless the assignment to the trustees was void as against the Official Assignee. **MANMOHANDAS RAMJI v. MACLEOD** (1902)

[I. L. R., 26 Bom., 765]

—s. 13—

See **ARREST—CIVIL ARREST.**

[I. L. R., 26 Bom., 652]

—s. 23—

L.—Reputed ownership—Insolvency—Property subject to mortgage in possession of insolvent at date of insolvency—Reputed ownership—Fixtures—Goods and chattels—Registration of mortgage—Registration Act (III of 1877), s. 17.—On the 23rd June, 1893, one Vishram

MEHJI was advanced, and power was given to the plaintiff to sell the same in default of payment. In March, 1899, Vishram Meghji became insolvent, and his estate thereupon vested in the Official Assignee. The plaintiff claimed the mortgaged property, but the Official Assignee contended that under s. 23 of the Indian Insolvency Act (11 & 12 Vict., c. 21) he was entitled to it as property which with the consent of the true owner was in the possession, order or disposition of the insolvent at the date of insolvency. The property was sold by consent, and the plaintiff brought this suit to recover the proceeds. From the evidence it appeared that the greater portion of the mortgaged property consisted of articles fixed to various parts of the flour mill or of the machinery therein. **Held**, as to the articles not so fixed, that the plaintiff was not the true owner of these, and that they were not therefore within the section, and passed to the Official Assignee.

ownership within the section. The plaintiff was therefore entitled to them, or to such portion of the proceeds of sale as represented their value. It was

INSOLVENT ACT (11 & 12 VICT., c. 21)

—continued.

—s. 23—concluded.

chattels within the rules of reputed ownership laid down in s. 23 of the Indian Insolvency Act (11 & 12 Vict., c. 21). The fact of such fixtures being removable by a tenant makes no difference. They are still fixtures to which the doctrine does not apply. **MACLEOD v. KIRABHOR KHUSHAL** (1901)

[I. L. R., 25 Bom., 659]

C. J.—A chose in action, if it is a debt due to the insolvent in his trade or business, comes within the words "goods and chattels" as contained in s. 23 of the Indian Insolvent Debtors Act. **PER BHASHYAM AYYANGAR, J.**—The instrument only

circumstances owner and thereby, he a substantial against the of the order be brought to enforce a charge upon the debt prior to his adjudication. **PUNENTHAYIL MUDALIAR v. BHASHYAM AYYANGAR** (1901)

[I. L. R., 25 Mad., 406]

—s. 24—

See *ante*, ss. 9 AND 24.

—ss. 26 and 36—

—Construction.—The words "and it shall be also lawful for the Court, on those or any other occasions", in s. 36 of the Insolvent Debtors Act (11 & 12 Vict., c. 21), are intended to receive a very wide application, and the Court has power to proceed under this section as soon as there is an insolvent. Under s. 26 of the same Act, no rule should be granted except on the application of the assignee or an admitted creditor. *In the matter of Bucklewar Chand* (1896), 1 C. W. N., 329, followed. No one can be regarded as a creditor until his name is admitted to the schedule, or until he establishes it there. **IN THE MATTER OF CHUNILAL OSWAL** (1902)

[I. L. R., 29 Calc., 503]

—s. 30—

See *ante*, ss. 7 AND 30.

—s. 38—

See *ante*, ss. 26 AND 30.

See **PRACTICE—CIVIL CASES—COUNSEL.**
[I. L. R., 29 Calc., 50]

INSOLVENT ACT (11 & 12 VICT., c. 21)

—concluded.

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—Insolvency—Proof of claim by creditor against insolvent—Time within which such proof to be made—English rules not applicable—English Bankruptcy Act, 1853 (16 & 17 Vict., c. 52)

—Insolvency—Proof of claim by creditor against insolvent—Time within which such proof to be made—English rules not applicable—English Bankruptcy Act, 1853 (16 & 17 Vict., c. 52)

prove or dispute this amount in his lifetime, and he died in May, 1897, leaving a will of which the applicants were executors. In 1898 a dividend on the insolvent's estate was declared and paid, but no claim on behalf of the deceased Jehangir Hormasji Mody was sent in by his executors. Subsequently the executors put in a claim, on behalf of their testator as creditor in the insolvent's estate, for Rs. 7,831. On the 18th July, 1901, the Official Assignee disallowed this claim. The executors, on the 19th February, 1902, applied to the Court that the claim should be admitted. The Official Assignee contended that the application was too late; that under s. 40 of the Indian Insolvent Act the rules framed under the English Bankruptcy Act of 1853 were applicable to India; and that under these rules (Rule No. 230) the applicants should have appealed, against his order disallowing the claim, within a certain time.

merits by the Commissioner in Insolvency. IN RE KALIDAS KRISHNAJI (1902)

[I. L. R., 26 Bom., 623]

—ss. 47 and 50—

—Offences under s. 50 a criminal offence—Charge, etc., must be framed to sustain conviction and sentence—Opposing creditor—Grounds of opposition should be stated in clear terms—Practice—Procedure—Insolvents were found guilty, under s. 50 of the Indian Insolvent Act, of wilfully preventing or purposely withholding the production of certain papers relating to their affairs, and sentenced to three months' imprisonment. Held that the proceedings, so far as they resulted in imprisonment, amounted to a criminal case. Held, further, calling on the facts of the case, that the

hearing. IN RE VALLABHDAS JAIRAM (1903)

[I. L. R., 27 Bom., 394]

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See INTEREST—STIPULATIONS AMOUNTING
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[I. L. R., 27 Bom., 21]

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See LIMITATION ACT, 1877, SEC. II,
ART. 179—ORDER FOR PAYMENT AT
SPECIFIED DATES.

[I. L. R., 27 Bom., 1]

—decree or money payable by—

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MODE OF EXECUTION—INSTAL-
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EXECUTION OF DECREE ON OR
AFTER AGREEMENTS OR COM-
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[I. L. R., 28 Calc., 810]

—repayment of loan by—

See TRANSFER OF PROPERTY ACT, s. 83.

[I. L. R., 24 All., 461]

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See MISCHIEF . I. L. R., 24 All., 155

INSURANCE.

—life—

See STAMP ACT (11 OF 1899), SEC. 1, ART.
47, CL. D., I. L. R., 25 Bom., 376

—marine—

See BILL OF LADING.

[I. L. R., 30 Calc., 565]

See CONTRACT ACT, SS. 20, 25 AND 65

[I. L. R., 25 Mad., 561]

LIFE INSURANCE.

—Policy of life insurance—Warranty—Age of assured—Misstatement of age—Onus of proof—Contract Act (IX of 1872), s. 65—Return of premium paid on policy subsequently held void—Evidence Act (I of 1872), s. 39 (5)—Statement as to age of a member of a family by another member since deceased—Admissibility—In August, 1898, F signed a proposal form, addressed to the

INSURANCE—continued.**LIFE INSURANCE—continued.**

defendant company, for a policy of insurance for a sum of money payable at his death. In it *V* gave the date of his birth as corresponding to 7th August, 1840, and stated that he would be fifty-eight next birthday, and declared that the particulars given therein were correct. On or about the same date, *V* also signed a "personal statement," which, after answering numerous questions, concluded with the following declaration—"I . . . do solemnly declare that, according to the best of my knowledge and belief, I am now in good health . . . and that my age does not exceed fifty-eight years . . . and that I have fully and faithfully answered all such questions as have been put to me in the form of proposal and by the medical referee relative to my habits, constitution and general state of health, without concealment or reservation of any kind. . . . and I hereby covenant and agree that this declaration shall be the basis of the contract between myself and the company, and if any untrue averment be contained herein, or if any of the facts required to be set forth in the proposal and in the medical examination be not truly stated, all moneys which shall have been paid upon account of the assurance made in consequence hereof shall be forfeited and the assurance itself be absolutely null and void." In September, 1898, the defendant company issued a policy for the sum proposed for, which recited that *V* had delivered a statement in writing declaring, *inter alia*, that his age on his next birthday would not exceed fifty-eight years, and contained the proviso that the policy was issued upon the express condition that in case any statement or allegation contained in that declaration should be untrue, or if the assurance thereby made

representations as to the age, means and circumstances of the assured. The evidence showed that the age of the assured was from three to four years greater than he had declared it to be. *Held* that the defendants were not liable on the policy. *Held* also that the plaintiff was not entitled, under a 65 of the Contract Act, to a refund of premium paid on the policy during the lifetime of the assured. In the "personal statement" referred to, the assured had omitted to

used form by this Commission. *See* *THE ASSURED*
WHITE, C.J.—The declaration contained in the "personal statement," being ambiguous, should be construed in favour of the assured, and amounted only to a warranty that the age of the assured was fifty-eight to the best of his knowledge and belief; but this statement of age by the assured was, in fact, an

INSURANCE—concluded.**LIFE INSURANCE—concluded.**

untrue statement, and untrue to his knowledge and belief. The statement was in the nature of a warranty.

consider was, not the materiality or otherwise of that statement, but its truth. The clause in the personal

I. L. R., 20 Bom, 99, referred to. ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE COMPANY v. NARASIMHA CHARI (1901)

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—malicious—

See DEFAMATION.

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See **LIFE ESTATE** . . . 11 C. W. N., 569

INTEREST.

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2. WHERE NO STIPULATION FOR, OR STIPULATED TIME HAS EXPIRED—

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—effect of stipulation for payment of—

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[L. R., 30 Calc., 853

INTEREST—continued.**—payment of—**

See **LIMITATION ACT, 1877, s. 20.**

[L. R., 29 Calc., 647

1. MISCELLANEOUS CASES.**(i) ACCOUNTS.**

1.—Barred item—Interest not allowed on barred item of account.—In an account, interest cannot be allowed on items that are barred by limitation. Interest is but an accessory, and when the principal is barred the accessory falls along with it. **DHONDINAM BIN LAXMON v. TARA SAVADAN** (1902)

[L. R., 27 Bom., 330

(ii) ARREARS OF RENT.

2.—Bengal Tenancy Act—Bengal Tenancy Act (VIII of 1885), ss. 61, 67—Tender—Where rent was tendered to plaintiff's am-mukhtar, but plaintiff refused to accept the same. Held that defendant was liable to pay interest on the arrears, in spite of such tender, as he omitted to follow the procedure prescribed by s. 61 of the Bengal Tenancy Act. **RANJIT SINGHA v. BHAGABUTTY CHAKRABORTY (1900)**

. 7 C. W. N., 720

3. ——— Bengal Tenancy Act (VIII of 1885), ss. 67, 178 (3) (h)—Landlord and tenant—Interest on arrears—Rate of interest specified in lease—Ordinary incidents of holding—Holding over after expiry of lease—An agricultural tenant held under a lease for six years, the term of which expired in 1881, and had been holding ever since. The rate of interest specified in the lease was 75 per cent. per annum. The landlord sued for rent for the years 1893 to 1895 and part of 1896, with interest at the rate specified in the lease. Held that, under the provisions of the Bengal Tenancy Act, the plaintiff could not recover interest at a rate higher than 12 per cent. per annum. **ADMINISTRATOR GENERAL OF BENGAL v. ASRAF ALI (1900)**

. I. L. R., 28 Calc., 227

4. ——— Landlord and tenant—Bengal Tenancy Act (VIII of 1885), ss. 67, 72, 178 (3) (h), 179—Rate of interest—Permanent tenure—Interpretation of statute.—Held by the majority of the Full Bench (**AMRUS ALI, J.**, dissenting) that s. 67 of the Bengal Tenancy Act does not control the provisions of s. 179 of that Act, and that therefore a contract for the payment of interest on arrears of rent, entered into by a landlord and a permanent tenure-holder under him, is enforceable by law, although it may contravene the provisions of s. 67 of the Bengal Tenancy Act. **Baranta Kumar Roy Chowdhury v. Promotha Nath Bhattacharyya** (1895), I. L. R., 26 Calc., 130, overruled. **MATANGINI DEBI v. MOHARRAM BISI** (s.d. 1901)

[L. R., 28 Calc., 674;
s.c., 5 C. W. N., 438

5. ——— Landlord and tenant—Purchaser, if liable to pay interest stipulated in

INTEREST—continued.

1. MISCELLANEOUS CASES—continued.

(ii) ARREARS OF RENT—concluded.

the kabuliyat of the original tenant—Incident of tenancy—Bengal Tenancy Act (VIII of 1885), s. 67.—A stipulation for payment of interest upon arrears of rent is an ordinary incident of tenancy in this country, unless there is something unusual in the stipulation; and as a rule it attaches to the tenancy, so that a purchaser of the tenancy will also be bound by the stipulation. When a tenure is advertised for sale in execution of a decree for arrears of rent, it is not necessary for the decree-holder to specify the rate of interest in the sale proclamation. Where in a lease the stipulation was that the lessee should pay a sum of ten rupees in default of delivery to the landlord of a certain quantity of molasses: Held that it was merely a personal covenant by the lessee. Also that, the rent mentioned in the sale proclamation not having included this sum, the auction-purchaser was not bound to pay it. *BAJNARAIN MITRA v. PANKA CHAND SINGH* (1902). 7 C. W. N., 203; [S.C. I. L. R., 30 Calc., 218]

(iii) ARREARS OF REVENUE.

6.—*Assignee of Government revenue—Interest on arrears—Act XII of 1881 (N. W. P. Rent Act), s. 98 (v)—Act XXVII of 1873 (N. W. P. Land-revenue Act), s. 148*—Held by *DANWAI and ATKMAN, JJ.*, that an assignee of Government revenue cannot sue for interest on arrears. *Bithal Das v. Harphul* (1894), I. L. R., 6 All., 503, referred to. *CHANDI PRASAD v. MAHENDRA MAHENDRA SINGH* (1900). I. L. R., 23 All., 5

(iv) BILL OF EXCHANGE.

7.—*Agreement to pay interest—Evidence, admissibility of—Promissory note—Civil Procedure Code (Act XIV of 1882), Ch. XXIX, s. 582.*—In a suit instituted under Ch. XXIX of the Civil Procedure Code (Act XIV of 1882), the plaintiff is not entitled to recover any interest unless such interest is specified in the promissory note.

[I. L. R., 30 Calc., 446;
S.C., 7 C. W. N., 412]

(v) BOND.

8.—*Compound interest—Unconscionable bargain*—One Sami-ud-din Ahmad Khan, on the 10th of November, 1892, borrowed from Kirpa Ram and Ghasi Ram Rs 900, for which he gave a bond bearing compound interest at 12 per cent. per mensem, with monthly rests, and mortgaging a 10-
house in
years of
13th of
bond to
ceeds of

INTEREST—continued.

1. MISCELLANEOUS CASES—continued.

(v) BOND—concluded.

the sale of the mortgaged share which had taken place in execution of a decree on a prior mortgage. The Court of first instance gave the plaintiff a decree, but allowed only simple interest at the rate stipulated for in the bond. On appeal the High Court sustained the lower Court's order as to the interest, holding that the bargain was an unconscionable bargain against which that Court had properly relieved the defendant mortgagee. *RAM v. SAMI-UD-DIN AHMAD KHAN* (1903)

[I. L. R., 25 All., 284]

(vi) COMPOUND INTEREST.

9.—*Interest Act (XXVIII of 1845), s. 2—Interest—Compound interest—Hard and unconscionable bargain.*—Where, in a bond, the principal was a small sum of Rs 500 and the interest was compound interest at the rate of five rupees per mensem with monthly rests, and the contention of the defendant was that the bargain was a hard and unconscionable one: Held that, there being no

(vii) DAMAGES.

10.—The Court may, in a proper case, award interest by way of damages. *Lala Chhajmal Das v. Brij Bhukan Lall* (1895), I. L. R., 22 I. A., 199, referred to. *JOGESHWAR BHAGAT v. GHANASHAM DASS* (1901). 5 C. W. N., 358

(viii) MESNE PROFITS.

11.—*Mesne profits, interest on—Civil Procedure Code (Act XIV of 1882), s. 211*—Regard being had to the provisions of s. 211 of the Civil Procedure Code (Act XIV of 1882) in the ascertainment of mesne profits due to the decree-holder, he is entitled to receive interest, year by year, on the amount found to be due. *Hareo Durga Chowdhary v. Sarat Chandra Chatterjee* (1901), 28 Cal., 1001, distinguished.

12.—*Execution of decree—Interest on mesne profits—Date from which such interest accrues.*—Held that the term "mesne profits" includes interest on such mesne profits, and that the interest accrues from the date upon which each instalment of the mesne profits may become due. *Griah Chander Lahiri v. Shosi Shikharwar Roy* (1900), I. L. R., 27 Calc., 951, followed. *NARPAT SINGH v. HAR GATAY* (1903). I. L. R., 25 All., 275-

INTEREST—continued

1. MISCELLANEOUS CASES—concluded.

(ix) MONEY LENT.

13.—Interest Act (XXVIII of 1955), s. 2—Exorbitant rate of interest—B borrowed money

[I. L. R., 29 Calc., 823

(x) MORTGAGE

14.—Mortgage decree, construction of.—Date of payment, meaning of.—There is nothing in the law to prevent interest at the rate stipulated on a bond being decreed up to the date of actual payment. Where a mortgage-decree provided for interest to be recovered from the date of the decree till the date of payment: Held that the words

15.—Interest up to date of payment—Interest at stipulated rate—Redemption—Subsequent interest—Transfer of Property Act (IV of 1932) ss. 68, 69—Civil Procedure Code (Act XIV of 1952), s. 209, and Sch IV, Form 109—Belchambers' Rules and Orders, 476, 477 and 605—Force of the rules—Ultra vires—Practice—Where a mortgage deed provides for interest up to the date of payment, interest will be allowed at the stipulated rate for the six months allowed for redemption, and at the Court rate from that date up to the date of payment. The decree for interest after the time allowed for redemption in accordance with Rule 605 (Belchambers' Rules and Orders) is a decree for payment of money. Rule 605 (Belchambers' Rules and Orders) is not ultra vires. *Bakar Sajad v. Udit Narain* (1902), 28 I. L. R. 21 All. 361, referred to *Rameswar Prosad Singh v. Rai*

INTEREST—continued.

2 WHERE NO STIPULATION FOR, OR STIPULATED TIME HAS EXPIRED.

DECREE.

16.—Interest at contract rate up to the date fixed by Court for payment of mortgage money—

2 STIPULATIONS AMOUNTING OR NOT TO PENALTIES

17.—Contract Act, s. 74—Enhanced rate of interest on failure to pay on due date—Penalty—Mortgage—Compound interest at a rate higher than that of simple interest—Interest at contract rate up to the date fixed by Court for payment of mortgage money—Subsequent interest at rate to be fixed by Court—A provision in a bond to the effect that the principal should be repaid with interest on the due date, and that on failure thereof interest should be paid at an increased rate from the date of the bond, amounts to a provision for a penalty, and, under the terms of s. 74 of the Contract Act, reasonable compensation should be allowed. *Kalachand Kyal v. Shab Chunder Roy* (1892), I. L. R., 19 Calc., 392, followed *Chajmal v.*

the contract rate should be allowed up to the date fixed by the decree for the repayment of the money due, and after that date at such rate as the Court may fix. *Rameswar Keer v. Mohamed Mehdi Hossain Khan* (1893), I. L. R., 26 Calc., 39; *Maharaja of Bharatpur v. Ram Kanno Dei* (1900), I. L. R., 28 I. A. 35; *Bakar Sajad v. Udit Narain Singh* (1899), I. L. R., 21 All., 361, referred to *RAMESWAR PROSAD SINGH v. RAI SHAM KISHEN* (1901)

[I. L. R., 29 Calc., 43

18.—Usury Laws Repeal Act (XXVIII of 1955), s. 2—Contract Act Amendment Act (VI of 1939), s. 4—Penalty—Principal sum, bearing no interest, repayable by instalments—Provision for interest in case of default.—Defendant was indebted to plaintiff, as the stakeholder of a "chat fund," and undertook to pay the amount of the principal by half-yearly instalments. He further undertook that, in case of default in the

INTEREST—continued.**3. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—continued.**

payment of such instalments, he would pay interest at the rate of one pie per rupee per diem from the date of default. No interest was payable on the principal sum unless default should be made, the instalments being in repayment of the principal sum alone, without interest. Default having been made, plaintiff sued on the bond, whereupon defendant pleaded that the rate of interest was penal and not recoverable. *Held* that plaintiff was entitled to recover. The contract was not one which provided

His liability to pay interest only arose in the event of default. The case was not governed, therefore, by the Contract Act of 1872, or the Contract Act Amendment Act of 1899. *Per* SIR ARNOLD WHITE, C J.—Under the Contract Act of 1872, a stipulation that an enhanced rate of interest should be payable as from the date of default is not a stipulation by way of penalty. The Explanation to s 4 of the Contract Act of 1899, which provides that a Court may

19. Mortgage bond—Penalty—Increased rate of interest from date of default—Act VI of 1899, s 4—A stipulation in a bond, for increased interest from the date of default, may be a stipulation by way of penalty, and the Courts in this country are competent to grant equitable relief against such stipulation, independently of s 74 of the Contract Act. *ABDUL GANI v. NANDLAL* (1902). I. L. R., 30 Cal., 15

20. Increased interest on default—Interest, provision for, in a bond—Penalty.—Where, in a bond executed on the 1st December, 1888, the stipulation was that interest would run at the rate of 1½ per cent per mensem,

sent back for consideration by the Court below, from the point of view that the provision as to increased interest might be penal, or that relief might be granted on equitable grounds. Also that, if the provision as to increased interest be not strictly enforced

INTEREST—continued.**3. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—continued.**

able, reasonable compensation should be granted to the plaintiff. *Umar Khan Mahmad Khan Desh-*

21. Bond—Instalments—Failure to pay instalments—Interest at a higher rate from the date of the transaction—Penalty.—Defendants borrowed a sum of Rs 100 from the plaintiffs and gave a bond, dated the 12th December, 1879, for Rs 250, repayable by monthly instalments of Rs 5. The bond provided that, in case of default in payment of any instalment, interest at 24 per cent. per annum should be charged from the date of the bond. The sum of Rs 203-2-9 was paid by defendants up to the 9th July, 1884, after which date no payments were made. The plaintiffs claimed interest from the defendants at the rate of 24 per cent., calculated from the date of the bond. *Held* that the provision in the bond, that on default interest at 24 per cent. per annum should be charged from the date of the bond, was in the nature of a penalty; and that the amount claimed could not be recovered. *THIRAK TUKARAM NAIK v. BHAG-CHAND* (1902). I. L. R., 27 Bom., 21

22. Act VI of 1899, s 4—Stipulation for enhanced interest and for compound interest in case of default—Penalty.—A bond stipulated for the payment, on a specified date, of half the principal sum advanced, together with interest at the rate of 15 per cent. per annum, and for the payment, on another date, of the balance of the principal, together with interest at the same rate. In case of default in the payment of either instalment, it was provided that the whole amount of

Court awarded no compensation. *Held* that, inasmuch as by s 74 of the Contract Act (as amended) the Court is to award reasonable compensation not exceed-

VEERABADRAM CHITTY (1902)

23. I. L. R., 28 Mad., 111
Penalty—Stipulation that interest shall be chargeable if instalments in repayment of principal be not paid at due dates—Applicability of Act VI of 1899 to suits filed prior to its coming into force—A stipulation

INTEREST—concluded.**3. STIPULATIONS AMOUNTING OR NOT TO PENALTIES—concluded.**

in a bond that the principal sum shall be repaid by instalments on specified dates (no provision being made for interest) and that, on default of such payments of principal being made, interest shall be chargeable as from the date of the bond, is not in the nature of a penalty. *Semble* that the Contract Act Amendment Act of 1899 does not apply to a suit filed prior to the date upon which it came into force.

CHINSA VENKATASAMI v. PERDA KONDIAH (1902)
[I. L. R., 28 Mad., 445]

24. ———— *Act VI of 1899 (Indian Contract Act Amendment Act), s. 4—Bond—Penalty.*—*Held* that a stipulation in a bond for payment of compound interest on failure to pay simple interest on the same amount is not a penalty within the meaning of s. 74 of the Indian Contract Act, 1872, as amended by Act VI of 1899.

GANGA DAYAL v. BACHCHU LAL (1902)
[I. L. R., 25 All., 28]

25. ———— *Penalty—Compound interest in lieu of simple—Act VI of 1899, s. 4.*—*Held*, following the ruling in *Ganga Dayal v. Bachchu Lal* (1902), I. L. R., 25 All., 28, that a stipulation for the payment of compound interest at the same rate as was payable upon the principal is not a stipulation by way of penalty, within the meaning of the Explanation to s. 74 of the Indian Contract Act, 1872.

JANKI DAS v. AHMAD HUSAIN KHAN (1902) . . . I. L. R., 25 All., 159

26. ———— *Act VI of 1899, ss. 1 and 4—Bond—Stipulation for enhanced interest, from date of bond, on breach of covenant to pay interest—Penalty.*—In a bond executed on the 8th of November, 1892, to secure a sum of Rs. 8,000, it was stipulated that interest should be paid every six months at the rate of 1 per cent. per mensem, but that in case of default in payment the mortgagor should pay interest at the rate of 2 per cent. per mensem from the date of the execution of the bond. On suit upon this bond to recover the principal sum secured, with interest at the enhanced rate, it was *held* that the provisions of Act VI of 1899 were applicable, the question whether interest was recoverable at the enhanced rate having been put in issue since that Act came into force, although the bond might have been executed before. *Held, also*, that, under s. 74 of the Indian Contract Act, as amended by Act VI of 1899, the stipulation for enhanced interest as from the date of the execution of the bond was a stipulation by way of penalty, against which relief should be granted.

LEIS BHUKHAN DAS v. SAMI-UD-DIN AHMAD KHAN (1902)
[I. L. R., 25 All., 169]

INTEREST ACT (XXVIII OF 1855).**—s. 2—**

See INTEREST—MISCELLANEOUS CASES—

COMPOUND INTEREST;

[7 C. W. N., 878]

MONEY LENT;

[I. L. R., 29 Calc., 823]

INTEREST ACT (XXVIII OF 1855)—concluded.**—s. 2—concluded.**

See INTEREST—STIPULATIONS AMOUNTING OR NOT TO PENALTIES.

[I. L. R., 25 Mad., 343]

INTERLOCUTORY ORDER.

See APPEAL—EX PARTE CASES.

[6 C. W. N., 153]

INTERLOCUTORY PROCEEDING.

See COSTS—COSTS IN THE CAUSE.

[I. L. R., 25 Bom., 230]

INTERVENOR.

See DIVORCE ACT (IV OF 1869).

[I. L. R., 30 Calc., 490 n]

See DIVORCE ACT (IV OF 1869), ss. 7, 11 AND 45 . . . 7 C. W. N., 504

[I. L. R., 30 Calc., 489]

See PARTIES—PARTIES TO SUITS—REVE. SUITS FOR, AND INTERVENORS IN SUCH SUITS

INTESTACY.

See APPEAL—ORDERS—ORDER UNDER MAD. REG III OF 1802, s. 18, CL. 7

[I. L. R., 24 Mad., 95]

INVENTIONS AND DESIGNS ACT (V OF 1868).

—s. 61—"Proprietor" of a design—Publication

—v. — v. India.—In 1869 the plaintiffs be an imitation of the design for a Bombay firm, and also that the design had been sent to the Bombay firm from a firm in London in 1868 before the plaintiffs' design was registered.

the inventor. *Held* that the design of the plaintiffs was not an invention within the meaning of the Act.

(1903) . . . I. L. R., 29 Cal., 41

INVESTIGATION.*See* LOCAL INVESTIGATION.*See* POLICE INQUIRY.**IRREGULARITY.**

—affecting or not merits of case—

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.*See* WITNESS—CIVIL CASES.

[I. L. R., 28 Calc., 37]

—in appointment of guardian *ad litem*—*See* MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 30 Calc., 1021

—in arbitration—

See ARBITRATION—DUTIES AND POWERS OF ARBITRATORS.

[I. R., 29 I. A., 168]

—in civil case—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—TRUST PROPERTY.

[I. L. R., 28 Calc., 574]

See SALE IN EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

[I. L. R., 28 Calc., 78]

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.

—in criminal case—

See CRIMINAL PROCEEDINGS.

[5 C. W. N., 252]

I. L. R., 25 Mad., 546

" 24 Mad., 675

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS . 6 C. W. N., 840*See* JOINDER OF CHARGES.

[5 C. W. N., 886]

I. L. R., 29 Calc., 385

" 26 Mad., 125

See JURY—JURY IN SESSIONS CASES.

[7 C. W. N., 168]

I. L. R., 26 Mad., 598

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION . 5 C. W. N., 710*See* WITNESS—CRIMINAL CASES—SUMMONING WITNESSES . 6 C. W. N., 548

—in sale—

See SALE FOR ARREARS OF REVENUE—

SETTING ASIDE SALE—IRREGULARITY.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.**IRRIGATION.***See* RIGHT TO USE OF WATER.**IRRIGATION CANAL.***See* LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R., 28 Calc., 683**IRRIGATION CHANNEL.***See* NEGLIGENCE.

[I. L. R., 24 Mad., 86]

See RAILWAYS ACT, ss 7, 10 AND 11.

[I. L. R., 25 Mad., 682]

See RIGHT TO USE OF WATER.

[I. L. R., 29 Calc., 100]

ISSUES.

—abandonment of—

See PLEADES—AUTHORITY OF, TO BIND CLIENT . I. R., 29 I. A., 76

—determination of—

See RES JUDICATA—MATTERS IN ISSUE.

—non-raising of issue as to limitation—

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—Issues in special suits—*Civil Procedure Code (Act XIV of 1852), s. 631—Specific Relief Act (I of 1877), s. 9—Suit for possession—Execution of decree—Obstruction—Application, for removal of obstruction, registered as a suit—Questions arising in such suit.—In the case of a claim not barred and not barred under s. 621 of the*

ISTEMRARI TENURES.*See* LEASE—CONSTRUCTION.

[I. L. R., 30 Calc., 883]

J

JALKAR.*See* FISHERY, RIGHT OF.**JOINDER OF CAUSES OF ACTION.***See* EJECTMENT, SUIT FOR

[I. L. R., 29 Calc., 871]

See MISJOINDER

JOINDER OF CAUSES OF ACTION— concluded.

See MULTIPARTICULARITY.

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[5 C. W. N., 880

1.—Civil Procedure Code, s. 44.—S. 44 of the Civil Procedure Code is not applicable to a suit unless the property of immovable property or for

2.—Civil Procedure Code, ss. 81, 44.—Misjoinder of Defendants and

3.—Misjoinder of causes of action—Suit including claims under two separate mortgage-deeds.—Held that s. 44 of the

JOINDER OF CHARGES.

See CONTEMPT OF COURT.—PENAL CODE, s. 174 . 5 C. W. N., 131

1.—Distinct offences.—Possession of forged or counterfeit currency notes.—Distinct offences.—Separate trial.—Penal Code (Act XLV of 1960), ss. 411 and 489 (c).—Offences under ss. 411 and 489 (c) of the Penal Code are distinct offences, and should be tried separately. MOHENDRO NATH DAS GUPTA v. EMPEROR (1902) [L. L. R., 29 Cal., 387; s.c., 5 C. W. N., 550

JOINDER OF CHARGES—continued.

2.—Misappropriation and criminal breach of trust.—Act XLV of 1960 (Indian Penal Code), s. 406.—Criminal breach of trust—Charge—Criminal Procedure Code, ss. 232, 234.—Where an accused

a year, contravenes s. 406 of the Penal Code, Procedure, and is an illegality not curable under s. 637. When the course pursued at the trial was illegal, a Court of Appeal or Revision cannot amend it by arranging afterwards what might or might not have been properly submitted to the jury and thereupon support the conviction or appropriate the finding of guilty to so much of it as was legal. Meaning of the word "irregularity" discussed. *Smurthwaite v. Hannay* (1894), L. R. A. C. 494, referred to. *Abdur Rahman v. The Emperor* (1900), 5 C. W. N., 657, disapproved. *SUBRAMANIAM IYER v. KING-EMPEROR* (1901)

[5 C. W. N., 886; s.c., L. L. R., 25 Mad., 61; L. R., 28 L. A., 257

4.—Offences falling under two definitions.—Criminal Procedure Code (Act V of 1898), ss. 196 and 235.—Sanction to prosecute.—Trial for more than one offence.—The accused was committed for trial before a Sessions Court, on a charge of abetment of dacoity, under s. 116 of

JOINDER OF CHARGES—continued.

the conviction and acquitted the accused. *Held* (reversing the order of acquittal) that the mere fact that no charge for the graver offence under s 123 of the Indian Penal Code (Act XLV of 1860) could

or abetted the offence of dacoity, he could be tried for each of these offences; but, as that section is controlled, as regards the offence against the State, by the provisions of s. 196 of the Criminal Procedure Code, its operation in this case is restricted to the minor offence, for which the accused could legally be charged and tried. *Queen-Empress v. Kartigouda* (1894), I. L. R., 19 Bom., 51, and *In re Nagari* (1894), I. L. R., 19 Bom., 340, distinguished. *Queen-Empress v. Anant Purbani* (1890)

[I. L. R., 25 Bom., 90]

ity of confession of one accused against another on a different charge.—*Prejudice.*—A was charged with three separate acts of criminal breach of trust as a public servant, under s. 409, Indian Penal Code, and B was charged with abetting these particular acts of criminal breach of trust by A, and also, upon an alternative charge under ss. 411 and 380, Indian Penal Code, in respect of a document found in his house and entirely unconnected with the acts

trust by A, as also on the alternative charge under ss. 411 and 380, Indian Penal Code. *Held* that, in the absence of any corroboration of the confession

were quite unconnected with the acts of criminal breach of trust, was improper, and that B was prejudiced by such joint trial by reason of the confession of A having been used and treated as a substantial part of the evidence against him in support of the second charge. *Nikunja Behari Roy v. Queen-Empress* (1900) . . . [C. W. N., 294]

6.—“Same transaction”—*Joint trial*—Several persons.—Offences not committed in same transaction.—Irregularity.—Illegality.—Criminal Procedure Code (Act V of 1898), ss. 235, 239 and 537.—Penal Code (Act XLV of 1860), s. 225.—Indian Railways Act (IX of 1890), s. 129.—*Gobind Kori*

JOINDER OF CHARGES—continued.

was caught by some persons placing clods of earth on a railway line. While being taken away by them,

them in the same trial. *Subramania Iyer v. King-Emperor* (1901), I. L. R., 25 Mad., 61, followed. *Gobind Kori v. Emperor* (1902)

[I. L. R., 29 Calc., 385; s.c., 6 C. W. N., 468]

7.—Criminal Procedure Code (Act V of 1898), ss. 234 and 235.—*Number of charges.*—The fact that offences are committed at different times does not necessarily show that they may not be so connected as to fall within s. 235 of the Criminal Procedure Code (Act V of 1898). The occasions may be different, but there may be a continuity and a community of purpose. The real and substantial test by which to determine whether several offences are so connected as to form

ing to be Hubbock's patent, using a counterfeited mark (under s. 486). He was convicted and separately sentenced for these offences. He appealed, contending that the trial was illegal, inasmuch as he had been charged at one trial with offences which were not connected together so as to form the same transaction under s. 235 (1) of the Criminal Procedure Code (Act V of 1898). *Held*, dismissing the

namely, that of deceiving buyers into purchasing what was not the genuine article of Hubbock and Company. *Emperor v. Sherwill Allisnor* (1902) . . . [I. L. R., 37 Bom., 135]

8.—Criminal Procedure Code (Act V of 1898), ss. 233, 235, 537.—*Joinder of charges*—*Objection first taken on appeal*—*Irregularity.*—A person was convicted on three

JOINDER OF CHARGES—continued

charges, namely—(1) abetting the falsification of a document (an account book), (2) fraudulently destroying and secreting documents, and (3) abetting criminal breach of trust; no objection on the ground of misjoinder being taken before the Sessions Judge. The only manner in which the alleged falsification and destruction were connected was that the account book and the documents were both in the custody of the accused, who thus had opportunity to falsify the one and to destroy the other. It was not suggested that the account book was falsified in order to conceal the fact that documents had been destroyed, or that documents had been destroyed in order to prevent the particular falsification from being detected. *Held* that the offences charged did not constitute one series of acts so connected together as to form the same transaction within the meaning of s 235 of the Code of Criminal Procedure. *Held, also*, that the misjoinder could not be treated as an irregularity curable under s 537, and that the conviction must be set aside. *Subramania Iyer v. King-Emperor* (1901), *I. L. R.*, 25 *Mad.*, 61, followed. *KRISHNASAMI PILLAI v. EMPEROR* (1902)

[*I. L. R.*, 26 *Mad.*, 125]

not committed in one series of acts so connected together as to form one transaction. The offence of kidnapping is complete when the minor is actually taken from lawful guardianship, and it is not an offence continuing as long as the minor is kept out of such guardianship. Even assuming that on the facts of this case the process of "taking" or "enticing" was going on at the time of the alleged assault on the mother, it was doubtful whether the assault was one of a series of acts so connected together as to form the same transaction, and the charge of assault should have been brought and tried separately. *CHAKKITY v. EMPEROR* (1902)

[*I. L. R.*, 26 *Mad.*, 454]**JOINDER OF CHARGES—concluded.**

(including s. 239) refer to the trial of the accused. The ruling in *Subramania Iyer v. Emperor* (1901), *I. L. R.*, 25 *Mad.*, 61, cannot be extended to a preliminary inquiry held by the Magistrate committing a case to a Sessions Court, so as to render the commitment itself illegal because there was misjoinder of offences or of offenders. In such a case, the Sessions Judge, if he considers it necessary, can frame charges against and try the accused separately. *IN THE MATTER OF GOVINDU* (1902)

[*I. L. R.*, 26 *Mad.*, 593]**JOINDER OF PARTIES.***See MISJOINDER.**See MULTIFARIOUSNESS.**See PARTIES—*PARTIES TO SUITS—JOINT FAMILY;
[*I. L. R.*, 28 *Cal.*, 517]

ADDING PARTIES TO SUITS.

JOINT DEBTORS.*See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR*

—sue against—

See CIVIL PROCEDURE CODE, s 153.[*I. L. R.*, 25 *Bom.*, 878]**JOINT DECREE.***See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.***JOINT DECREE-HOLDERS.***See LIMITATION ACT, 1877, ss 7 AND 8 AND SCH II, ART. 179.*[*I. L. R.*, 25 *Mad.*, 431]**JOINT FAMILY.***See HINDU LAW—*

ALIENATION—ALIENATION BY FATHER;

JOINT FAMILY.

*See MAHOMEDAN LAW—JOINT FAMILY.**See MALABAR LAW—JOINT FAMILY.**See PARTIES—PARTIES TO SUITS—JOINT FAMILY.*

—business—

See HINDU LAW—JOINT FAMILY—DEBTS, AND JOINT FAMILY BUSINESS.

—property—

See EXECUTION OF DECREE—MODE OF EXECUTION—JOINT PROPERTY.

JOINT FAMILY—concluded.

—property—concluded.

See HINDU LAW—

INHERITANCE—JOINT PROPERTY
AND SURVIVORSHIP;

PARTITION.

See PARTITION—MISCELLANEOUS CASES.

[6 C. W. N., 698]

See SALE IN EXECUTION OF DECREE—
JOINT PROPERTY.**JOINT LANDLORDS.**

See BENGAL TENANCY ACT—

ss. 55 AND 188;

[L. L. R., 29 Calc., 219]

ss. 90, 92 AND 188;

[7 C. W. N., 93]

s. 188.

JOINT PROPERTY.

See CO-SHARERS

See HINDU LAW—INHERITANCE—JOINT
PROPERTY AND SURVIVORSHIP.See INJUNCTION—SPECIAL CASES—
POSSESSION OF JOINT PROPERTY.See INTEREST—MISCELLANEOUS CASES—
ARREARS OF RENT.

[L. L. R., 28 Calc., 227]

See JOINT FAMILY—PROPERTY.

See POSSESSION, ORDER OF CRIMINAL
COURT AS TO—CASES IN WHICH
MAGISTRATE CAN DECIDE AS TO POS-
SESSION . . . 7 C. W. N., 462**JOINT TENANCY.**See HINDU LAW—INHERITANCE—JOINT
PROPERTY AND SURVIVORSHIP.

[L. L. R., 28 Bom., 445]

See PUBLIC DEMANDS RECOVERY ACT.

[6 C. W. N., 302]

—Landlord and tenant—Kabslyat by one of several joint tenants—Liability of such tenant for his share only.—Where one of several joint tenants executed a *kabslyat* in favour of the landlord for the entire tenure, and it was proved that the other tenants did not acquiesce in this, and where in a separate suit by the other tenants it was found that they were not bound by the *kabslyat*: Held that the tenant executing the *kabslyat* for the entire tenure was not bound in excess of his share, and was not liable for the whole rent. *Ber-hunuddi, Howladar v. Mohan Chander Guha* (1891), 8 C. L. R. 511, relied upon. *RAM TARAN CHATTERJEE v. ASMATULLAH SHIKH* (1900)

[6 C. W. N., 111]

JOINT TRIAL.See CONFESSION—CONFESSION OF PRISON-
ERS TRIED JOINTLY.**JOINT WRONG-DOERS.**See CONTRIBUTION, SUIT FOR—JOINT
WRONG-DOERS.**JUDGE.**

See DISTRICT JUDGE.

See JUDGE OF HIGH COURT.

See SESSIONS JUDGE

See SUBORDINATE JUDGE.

See SPECIAL SECOND APPEAL—OTHER
ERRORS OF LAW OR PROCEDURE—
DISCRETION, EXERCISE OF.—is, in India, judge of both law and
facts—

See MALICIOUS PROSECUTION.

[L. L. R., 28 Calc., 591]

—Duty of Judge—Propriety of consultation
with another Judge—Judges who have heard the**JUDGE OF HIGH COURT.**

See REFERENCE TO FULL BENCH.

[L. L. R., 28 Calc., 211]

—order of—

See LETTERS PATENT, HIGH COURTS,
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—power of—

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See FOREIGN COURT, JUDGMENT OF.

See LETTERS PATENT, HIGH COURTS,
1865, CL. 15.See PRIVY COUNCIL, PRACTICE OF—CON-
CURRENT JUDGMENTS ON FACTS.—copy of, deduction of time necessary
for obtaining—

See LIMITATION ACT, 1877, ss. 12 AND 5.

—criminal cases—

See DISCHARGE OF ACCUSED—EFFECT OF
DISCHARGE. L. L. R., 29 Calc., 728

JUDGMENT—concluded.

— in former suit, admissibility in evidence of—

See ESTOPPEL—ESTOPPEL BY JUDGMENT.

See EVIDENCE, CIVIL CASES—DECREES.

See RES JUDICATA—ESTOPPEL BY JUDGMENT

— reversal of—

See APPELLATE COURT—INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT.

CRIMINAL CASES.

(1901) . . . I. L. R., 25 Mad., 594

2.—*Criminal Procedure Code (Act V of 1898), s. 367—Judgment of Appellate Court—Recording of, when defective—Deficiency, if can be made up for by reference to judgment of Court of first instance—Appeal, proper trial of—Order for retrial—Practice.*—It is the duty of a Sessions Judge disposing of an appeal to record a judgment according to law. Where certain persons were convicted of rioting by a Deputy Magistrate, and the Sessions

JUDGMENT-DEBT.

— agreement to give time for satisfaction of—

See CIVIL PROCEDURE CODE, s. 257A.

[I. L. R., 26 Mad., 19]

JUDGMENT-DEBTOR.

See ARREST—CIVIL ARREST.

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

See WARRANT OF ARREST—CIVIL CASES.

[I. L. R., 26 Mad., 120]

— death of—

See CIVIL PROCEDURE CODE, 1882, s. 108.

[I. L. R., 29 Calc., 33]

JUDGMENT-DEBTOR—concluded.

— death of—concluded.

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

See REPRESENTATIVE OF DECEASED PERSON.

See SURETY—LIABILITY OF SURETY.

[I. L. R., 24 Mad., 687]

— deposit of money by—

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

[I. L. R., 30 Calc., 262]

— representative of—

See CIVIL PROCEDURE CODE, s. 244—PARTIES TO SUIT.

See REPRESENTATIVE OF DECEASED PERSON.

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See OUDH COURTS ACT, s. 8.

[5 C. W. N., 781]

JUDICIAL DISCRETION.

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JUDICIAL NOTICE.

See ACCUSED PERSON . 5 C. W. N., 110

JUDICIAL OFFICER.

— Land Acquisition Collector is not—

See LAND ACQUISITION ACT (I of 1894).

[I. L. R., 30 Calc., 36]

JUDICIAL PROCEEDING.

See CRIMINAL PROCEDURE CODE, s. 476.

[7 C. W. N., 423]

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GENERAL CASES;

FABRICATING FALSE EVIDENCE.

[I. L. R., 23 Calc., 348]

— proceeding before Land Acquisition Collector is not—

See LAND ACQUISITION ACT (I of 1894).

[I. L. R., 30 Calc., 36]

— revision of—

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[5 C. W. N., 287]

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[I. L. R., 29 Calc., 509]

See HEREDITARY OFFICES ACT (BOM ACT III of 1874), s. 18.

[I. L. R., 25 Bom., 186]

See HIGH COURT, JURISDICTION OF.

See JURISDICTION OF CIVIL COURT.

See JURISDICTION OF CRIMINAL COURT.

See JURISDICTION OF REVENUE COURT.

See LETTERS PATENT, HIGH COURTS, 1865, cl. 12.

See MAGISTRATE—

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POWERS OF MAGISTRATES.

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[I. L. R., 27 Bom., 189]

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[I. L. R., 28 Bom., 259]

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— of Small Cause Court—

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[I. L. R., 30 Calc., 713]

— over foreigners—

See FOREIGN COURT, JUDGMENT OF.

[5 C. W. N., 741]

— want of—

See REGISTRATION ACT (III of 1877), s. 23.

[I. L. R., 29 Calc., 654]

I CAUSES OF JURISDICTION.

(a) DWELLING.

1—Letters Patent, 1865, cl. 12—"Dwell"—

Malabar Hill in Bombay. The plaintiff in the first instance was rejected for want of jurisdiction. On appeal: Held that the temporary residence of the

JURISDICTION—continued**1. CAUSES OF JURISDICTION—continued.****(a) DWELLING—concluded.**

ing at any particular time, but it is open to him to show that he is not dwelling there, but at some other place. The defendant had no residence at Kolhapur at the time the plaint was presented, and must be taken to have then been dwelling in Bombay. **FERNANDEZ v. WREAT (1900)**

(I. L. R., 25 Bom., 176)

(b) CAUSE OF ACTION**(i) GENERAL CASES****2.—Foreigner—Defendants non-resident for-**

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tion—
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Cause
the C

British Courts are empowered to pass judgment against a non-resident foreigner, provided that the cause of action has arisen within the jurisdiction of the Court pronouncing the judgment. **RAMBHAT v. SHANKAR BASWANT (1901)**

(I. L. R., 25 Bom., 528)

ant's heirs—Practice—Procedure—A Mahomedan

possession. Held that the cause of action was not

(I. L. R., 25 Bom., 528)

(ii) BREACH OF CONTRACT.

4.—Civil Procedure Code (Act XIV of 1882), s. 17 (a) and Expt. III (i) and (ii)—Suit for price of goods delivered—Jurisdiction—Place of suing—Contract, suit arising out of—Cause of action, where arises—Plaintiff, who resided at Samastipur in the Tirhoot District, having indigo seeds for sale, advertised: "For sale. 300 mds. fresh indigo seeds at Rs-8 per md. delivered at Kishenpore station" (in Tirhoot District). Defendant, who resided at Nadia, wired: "Will give Rs for 300 mds. and, if offer accepted, despatch to Chooandanga" (Railway station in Nadia District), and wrote a letter the same day to the same effect and asking for railway receipt. Plaintiff, on receipt of the telegram, wrote: "120 bags (300 mds.) of

JURISDICTION—continued.**1. CAUSES OF JURISDICTION—continued****(b) CAUSE OF ACTION—continued.****(ii) BREACH OF CONTRACT—concluded.**

indigo seed went forward to Kishenpore station early this morning, and I have instructed station-master to despatch it. R. R. is herewith enclosed. Your cheque for Rs900 on receipt of seed will oblige. The seeds were delivered

brought
Samasti-

Held
that the
Kishenpore

(I. C. W. N., 912)

(iii) COMPROMISE.

5.—Civil Procedure Code, s. 17—"Cause of action"—Suit for a declaration that a compromise and a decree founded thereon are null and void as against the plaintiff, and for an injunction restraining

(1895), I. L. R., 22 Calc., 333, at p. 540, referred to. The plaintiff came into Court, alleging that he was the adopted son of one Balmakund, having been adopted to him by Balmakund's widow, and that the

for a considerable sum payable out of the property left by Balmakund, which property the plaintiff

JURISDICTION—continued.**I. CAUSES OF JURISDICTION—continued.****(b) CAUSE OF ACTION—continued.****(iii) COMPROMISE—concluded.**

Cawnpore, and execution was being taken out there, a material portion of the plaintiff's cause of action arose in Cawnpore, and the Subordinate Judge of

(iv) COSTS.

B.—Assignment of decree for costs—Costs realized by assignee—Decree reversed on appeal—Suit by successful appellants to recover from the assignee the costs realized by him.—Certain appellants in the High Court obtained from that Court a decree dismissing the respondents', plaintiffs', suit with costs. That

decree-holders filed a separate suit against him for their recovery. *Held* that the decree-holders had no cause of action for a suit to recover from the assignee the costs realized by him in the manner above described. **LALTA PRASAD v. SADIQ HUSSEIN (1902)**

[I. L. R., 24 All., 288]

(v) FALSE EVIDENCE.

7.—False evidence not actionable—Conspiracy to give false evidence.—No civil action lies against a witness for giving false evidence; and the fact that the evidence is given in pursuance of a conspiracy to obtain the conviction of the accused person does not make any difference. The only remedy against a false witness is a prosecution for perjury. Where, therefore, a plaintiff sued three defendants for giving false evidence against him in a trial at Bombay, alleging that it was done in pursuance of a conspiracy entered into at Hyderabad to obtain his conviction: *Held* that the plaintiff disclosed no cause of action. A mere conspiracy to injure a man, without an overt act resulting in the injury, does not furnish any cause of action. A conspiracy is not illegal unless it results in an act done which by itself would give a cause of action. **TEMPLETON v. LAURENCE (1900)**

[I. L. R., 25 Bom., 230]

(vi) NEGOTIABLE INSTRUMENTS.

8.—Stamp Act (I of 1879), s. 16—“Stamped at the time of execution”—Stamp Act (II of 1899)—Affixing and cancelling stamp immediately after signature—Letters Patent, Art. 12—Part of

JURISDICTION—continued.**I. CAUSES OF JURISDICTION—concluded.****(b) CAUSE OF ACTION—concluded.****(vi) NEGOTIABLE INSTRUMENTS—concluded.**

the cause of action—Promissory note payable in Madras or Secunderabad—Payments of interest in Madras.—A promissory note was executed in plaintiff's favour at Vizianagram, payable in Secunderabad or Madras. Payments of interest due on the note were made in Madras. The note was signed first, the stamp having been affixed and cancelled after signature, the acts being practically simultaneous. Leave to sue in the High Court had been obtained under Art. 12 of the Letters Patent. *Held* that part of the cause of action had arisen in Madras. Also that the note was stamped at the time of the execution, within the meaning of s. 16 of the Stamp Act (I of 1879). **SURI MULL v. HUDSON (1900)**

[I. L. R., 24 Mad., 259]

(vi) PRINCIPAL AND AGENT.

9.—Jurisdiction—Foreigner carrying on business by agent—Civil Procedure Code (Act XIV of 1882), s. 17—Suit in Court in British India on judgment of French Court—Effect of order in insolvency of French Court—Business carried on by managing member of joint family—Quere whether a non-

that the agency was not proved, the alleged agent being merely the manager of joint family property, of which the defendant owned a share; and they held that such a person was not the agent of the family.

that such a person was not the agent of the family.

that such a person was not the agent of the family.

2. SUITS FOR LAND.**RENT.**

10.—River changing its course—Act XII of 1881 (North-Western Provinces Rent Act), ss. 1, 101, 93 (a)—Suit for rent—Of two agricultural holdings

JURISDICTION—concluded.**2. SUITS FOR LAND—concluded.****RENT—concluded.**

situated in the Ballia district of the North-Western Provinces, each separately assessed to rent, one became submerged by the river Ganges, and subsequently re-appeared on the other side of the river in the Shah-
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PRASAD KUMAR v. RATUL THAKUR (1901)

[I. L. R., 23 All., 262]

JURISDICTION OF CIVIL COURT.

Col.

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See **BENGAL TENANCY ACT**, ss. 101 TO 111A I. L. R., 28 Calc., 28

See **COURT OF WARDS ACT (BENGAL ACT IX OF 1879)**, ss. 6, 7 AND 10.

[I. L. R., 29 Calc., 638]

See **CROWN LANDS**

[I. L. R., 25 Mad., 268]

See **HIGH COURT, JURISDICTION OF.**

See **MADRAS HEREDITARY VILLAGES OFFICER ACT**, s. 3 I. L. R., 28 Mad., 490

See **PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION.**

See **PENSIONS ACT (XXIII OF 1871)**, ss. 4 AND 6.

See **PRACTICE—CIVIL CASES—EXECUTION PROCEEDINGS**, I. L. R., 28 Calc., 353

See **RECEIVER** . I. L. R., 28 Calc., 790

See **RIGHT OF SUIT.**

See **SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.**

[I. L. R., 29 Calc., 773]

See **SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—BREACH OF PROMISE OF MARRIAGE.**

[I. L. R., 24 Mad., 652]

See **TAX** . I. L. R., 26 Bom., 294

JURISDICTION OF CIVIL COURT—continued.

—Magistrate's orders, interference with—

See **MAMLATDAR, JURISDICTION OF.**

[I. L. R., 28 Bom., 353]

—marriage—

See **RESTITUTION OF CONJUGAL RIGHTS.**

[I. L. R., 28 Calc., 37]

1. CASTE.

1.—Caste question—Excommunication from caste—Bombay Regulation II of 1827, s. 21, cl. 1—Civil Procedure Code (Act XIX of 1852), s. 11—Zanzibar to be treated as a district in the Presidency of Bombay—Zanzibar Order in Council, 1884—Defamation—Privilege—

Courts. But when a claim to property is involved, the Regulation is no bar so far as that claim is concerned. The Courts in that case have a distinct and separate jurisdiction, resting not on the caste dispute but on the claim to property. Plaintiffs and defendants were residents of Zanzibar, and belonged to the Visa Oswal section of the Bania caste. The defendants were Shettias of the caste, and as such had issued an order forbidding their caste-fellows to attend a certain feast given by the members of the Lovana caste.

granted. No claim to property was involved. It was a caste question, over which the Civil Courts had no jurisdiction under Bombay Regulation II of 1827, s. 21, cl. 1. Held, as to the claim for damages for defamation, that the announcement of the caste decision was a duty incumbent on the defendants as Shettias of the caste, and was therefore privileged so far as it was communicated only to members of the caste. The evidence did not disclose any communication beyond that limit, and no evidence of malice was given. Per CHANDAYAN, J.—Roughly speaking, a suit raising a caste question must fall within one of three classes. First, it may be a suit brought by a member of a caste, complaining of expulsion and asking for a declaration that the expulsion is illegal and that he is still a

JURISDICTION OF CIVIL COURT

—continued.

1. CASTE—concluded.

member, and as such entitled to its social privileges. In cases of this class there is no cause of action, and the Civil Courts have no jurisdiction, although the plaintiff alleges that he has not been heard in his defence or that his excommunication has been for the breach of a rule which either never existed or which the plaintiff, in fact, never violated. The question is entirely a caste question, and falls within Bombay Regulation II of 1827, s. 21, cl. 1.

diction is limited. All the Court can inquire into is whether the order of excommunication was passed *bona fide* in accordance with natural justice, i.e., after a due hearing given to the party excommunicated, at a regularly convened meeting of the caste which passed the order, or by a person duly authorized by the caste to pass it, in accordance with either caste usage or rule, and for an offence against that

creation it will not interfere—the Court in that case having jurisdiction to inquire, from the point of view of the caste, not of the Court, into the reasonableness or justifiable character of the rule for a breach of which the order of excommunication was passed. Thirdly, suits claiming relief for loss of caste and character: these are in the nature of suits for libel, and fall within the law applicable to such suits. *NATHU VELJI v. KESHAJI HIRACHAND* (1901) . . . I. L. R., 28 Bom., 174

2. RENT AND REVENUE SUITS.

NORTH-WESTERN PROVINCES.

2.—Suit for ejectment—Act XII of 1881 (*North-Western Provinces Rent Act*), ss. 93, 95—Jurisdiction—Civil and Revenue Courts—Suit to eject as a trespasser a person who claimed to be entitled to succeed to the holding of a deceased

the Civil Court for ejectment of such person, as a trespasser who had no right whatever to succeed to the

JURISDICTION OF CIVIL COURT

—continued.

3. RENT AND REVENUE SUITS—continued.

NORTH-WESTERN PROVINCES—continued.

19 All., 452; and *Kalanti v. Dassu Pands* (1898), I. L. R., 20 All., 520, referred to. *BARU MAL v. NIADAR* (1901) . . . I. L. R., 23 All., 360

3.—Act XII of 1881 (*North-Western Provinces Rent Act*), ss. 93, 95—Act XIX of 1873 (*North-Western Provinces Land-revenue Act*), s. 102—Jurisdiction—Civil and Revenue Courts—Suit to eject as a trespasser a person who claimed to be entitled to the holding of a deceased occupancy tenant—*Res judicata*.—Upon the death of an occupancy tenant, a person, who alleged that he was entitled to succeed to the deceased's occupancy holding, obtained from the revenue authorities, by means of an application under s. 102 of the North-Western Provinces Land-revenue Act, mutation of names in his

such suit *Subarni v. Bhagwan Khan* (1896), I. L. R., 19 All., 101, distinguished. *NIADAR v. BARU MAL* (1901) . . . I. L. R., 24 All., 153

4.—Suit for possession—Act XII of 1881 (*North-Western Provinces Rent Act*), ss. 10, 93, 95—Act XIX of 1873 (*North-Western Provinces Land-revenue Act*), s. 241—Jurisdiction—Civil and Revenue Courts—Suit by mortgagee from occupancy tenant for possession of

attempted to take possession of the land under his

JURISDICTION OF CIVIL COURT

—continued.

2. RENT AND REVENUE SUITS—concluded.

NORTH-WESTERN PROVINCES—concluded.

5.—Suit for removal of trees—*Act XII of 1881 (North-Western Provinces Rent Act), s. 93, cl. (b), (c) and (cc)*—Suit by zamindar against tenant for removal of trees planted by tenant on tenant's holding—*Jurisdiction—Civil and Revenue Courts*—The plaintiff alleged in his plaint that, he being the zamindar, and the defend-

mandatory injunction directing the defendants to remove the trees and to restore the land to its original condition. *Held* that the suit involved a dispute or matter in which a suit of the nature mentioned in s. 93 of Act XII of 1881 might have been

I. L. R., 9 All., 53, overruled. Deodat Tiwariv.

paid
1873
Act),
rithern
India Canal and Drainage Act), s. 45—Claim arising out of collection of revenue or for sum realisable as revenue.—A suit to recover canal dues alleged to have been paid by mistake is a claim arising under s. 241, cl. (i), of the North-Western Provinces Land-revenue Act of 1873; and, under that provision, read with s. 45 of the Northern India Canal and Drainage Act, 1873, a Civil Court has no jurisdiction to entertain it. The High Court was right in taking cognizance of the

3. REVENUE COURTS.

PARTITION.

7.—*Civil and Revenue Courts—Jurisdiction—Act XIX of 1873 (North-Western Provinces Land-revenue Act), s. 241(f)*—Suit by person, not a party to the partition proceedings, to obtain in a Civil Court a declaration that a partition carried out in a Revenue Court was fraudulent and injurious to his interest—If, by a fraud practised

JURISDICTION OF CIVIL COURT

—concluded.

3. REVENUE COURTS—concluded.

PARTITION—concluded.

JURISDICTION OF CRIMINAL COURT.

1. GENERAL JURISDICTION . . . Col 539
2. EUROPEAN BRITISH SUBJECTS . . . "

See HIGH COURT, JURISDICTION OF— BOMBAY—CRIMINAL.

See MAGISTRATE—

GENERAL JURISDICTION;
POWERS OF MAGISTRATES;
[I. L. R., 29 Calc., 885]

RE-TRIAL OF CASES.
[I. L. R., 29 Calc., 412]

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO . I. L. R., 25 All., 545

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—

CASES IN WHICH MAGISTRATE CAN
DECIDE AS TO POSSESSION;

[5 C. W. N., 105]

LIKELIHOOD OF BREACH OF THE
PEACE . I. L. R., 29 Calc., 446

See REVISION—CRIMINAL CASES—DIS-
CHARGE OF ACCUSED.

[I. L. R., 27 Bom., 84]

See SANCTION FOR PROSECUTION—REVO-
CATION OF SANCTION

[I. L. R., 30 Calc., 394]

See SECURITY FOR GOOD BEHAVIOUR.

[I. L. R., 29 Calc., 455]

See WITNESS—CRIMINAL CASES—SUMMON-
ING WITNESSES.

[I. L. R., 30 Calc., 508, 508n]

— In Native State—

See FOREIGN JURISDICTION ACT, 1873,
ss. 4, 6 AND 8.

[I. L. R., 26 Mad., 607]

JURISDICTION OF CRIMINAL COURT—concluded.

—Magistrate cannot split up offences in order to give himself jurisdiction—

See ROBBERT . 5 C. W. N., 372

1. GENERAL JURISDICTION.

1.—Offence committed on the high seas—
Jurisdiction—High seas—Procedure—Penal Code (Act XLV of 1860)—37 & 38 Vict., c. 27, s. 3.—A Presidency Magistrate has authority to charge, convict and sentence, under the

2.—Offence committed out of British India—Criminal Procedure Code, s. 188—Offence

Code of Criminal Procedure was applicable was commenced without the certificate provided for by that section having been obtained, it was held that the proceedings were void, and that the subsequent com-

2. EUROPEAN BRITISH SUBJECTS.

3.—Criminal Procedure Code, s. 451 (1)—Right

cused, before the trial was begun, when he did not wish for a jury, did not prevent him from

[I. L. R., 24 All., 511]

JURISDICTION OF REVENUE COURT.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS.

See NORTH-WESTERN PROVINCES RENT ACT (XII of 1881), ss. 42, 95 AND 206.
[I. L. R., 24 All., 517]

See RENT, SUIT FOR.

[I. L. R., 28 Calc., 485]

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

JURY.

Col.

1 JURY IN SESSIONS CASES . . . 540

2 WITHDRAWAL OF CASE FROM JURY . 541

See CHARGE TO JURY.

See VERDICT OF JURY.

—Jury under nuisance sections of Criminal Procedure Code—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE—REMOVAL OF PROSTITUTES . . . 5 C. W. N., 588

See VERDICT OF JURY. 11 C. W. N., 588

—right to claim—

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS.

[I. L. R., 24 All., 511]

—trial by—

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE

[I. L. R., 25 Bom., 680]

See REVISION—CRIMINAL CASES—VERDICT OF JURY, AND MISDIRECTION.

1. JURY IN SESSIONS CASES.

1.—Choosing jury—Criminal Procedure Code (Act V of 1898), ss. 276 to 279, 326, 537—Jury, selection of, how made—Selection by lot, object of—Irregularity in selection affecting the constitution of the Court, whether curable—Right of accused to be tried by a properly-selected jury—Exemption of juror, when proper.—The object of the provisions in ss 326 and 276-279 of the Criminal Procedure Code is to secure an impartial trial by rendering impossible any intentional selection of jurors to try a particular case; and an accused person

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JURY—continued**1. JURY IN SESSIONS CASES—concluded.**

to serve as jurors, and s. 276 provides that those again who are to try a particular case are to be similarly chosen by lot from amongst the persons so summoned, or, when there is a deficiency of persons summoned, from amongst such other persons as might be present in

irregularity of a very grave and serious nature, such as could not be cured by the provisions of s. 537.

2.—Jurors as assessors—Criminal Procedure Code (Act V of 1898), s. 69 (3), 309—Sessions Judge sitting with jury—Charges of theft and administering drug—Opinion of only two jurors taken as assessors on second charge—Validity—At the trial of an accused, before a Sessions

3.—Summons on juror—Criminal Procedure Code (Act V of 1898), s. 332—Summons upon a juror—Absence from home—Service, by fixing on door—Non-attendance of juror—Fine—Where summons was served by fixing the duplicate on the door of the dwelling-house of a juror who at the time was living away from home and had no knowledge of such service of the summons: Held that

arrangement for the acceptance of notice or information in the Court of their inability to attend. **MOXI LAL ROY v. EMPEROR (1902) 8 C. W. N., 887**

2. WITHDRAWAL OF CASE FROM JURY.

4.—No power of withdrawal in Court of Session.—Under the present Code of Criminal

JURY—concluded.**2 WITHDRAWAL OF CASE FROM JURY—concluded.**

Procedure, a Court of Session does not possess the power to withdraw a case from the jury on any ground whatsoever. Where the case is such that the Sessions Judge would, if he possessed the power of withdrawing the case from the jury, exercise that power, the High Court will exercise its powers of revision. **JOGESHWAR GHOSH v. KING-EMPEROR (1901) 5 C. W. N., 411**

JUSTICE OF THE PEACE.

See FOREIGN JURISDICTION ACT, 1879, ss. 4, 6 AND 8.

[I. L. R., 28 Mad., 807]

K**KABULIYAT.**

See ACQUESCENCE . 7 C. W. N., 170.

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—KABULIYATS.

See EVIDENCE—PAROL EVIDENCE—

EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES; . 6 C. W. N., 242

VARYING OR CONTRADICTING WRITTEN INSTRUMENTS. [6 C. W. N., 60]

See JOINT TENANCY . 6 C. W. N., 111

See LEASE.

—suit to set aside—

See BENGAL TENANCY ACT, s. 29.

[I. L. R., 28 Calc., 90]

KANUNGO.

See PENAL CODE, s. 186.

[6 C. W. N., 120]

KARNAVAN.

See MALABAR LAW—ENDOWMENT.

KHOTI SETTLEMENT ACT (BOM. ACT I OF 1880).

—s. 8—

—Khot—Khot in isbat lands—Settlement Officer—Thal—Occupancy tenants—Rents payable by other tenants in absence of agreement with the Khot—Landlord and tenant—Where, in a Khoti village, the Settlement Officer has determined the share of Thal with regard to the occupancy tenancies, and the tenants other than the occupancy tenants do.

KHOTI SETTLEMENT ACT (BOM. ACT I OF 1880)—concluded.**—s. 8—concluded.**

not appear to hold their lands on any terms agreed upon between the *khots* and themselves, such tenants are entitled, under s. 8 of the *khots* Settlement Act (Bombay Act I of 1880), to pay rent to the *khots* at the same rates as are paid by occupancy tenants.

KRISHNOYA NAYAK v. KESHAV BALKRISHNA (1902)
[I. L. R., 27 Bom., 71]

—s. 33—

See RES JUDICATA—MATTERS IN ISSUE—
SUIT FOR RENT

[I. L. R., 26 Bom., 25]

KIDNAPPING.

known by the nephews and by X that the father objected to such a marriage. X was present at the

looking that the kidnapping was from the guardianship of X. The accused were acquitted, on the

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room
the
be
in the custody of a servant or friend for a limited

KIDNAPPING—concluded.

Purpose and for a limited time does not determine the father's rights as guardian or his legal possession for the purposes of the criminal law. If the facts are not inconsistent with a continuance of the father's legal possession of the minor, the latter must be held to be in the father's possession or keeping, even though the actual possession should be temporarily with a friend or other person. JAGAN-
NADHA RAO v. KAMARAJU (1900)

[I. L. R., 24 Mad., 284]

2.—Offence when complete.—The offence of kidnapping is complete when the minor is actually taken from lawful guardianship, and it is not an offence continuing as long as the minor is kept out of such guardianship. CHEKKUTY v. EMPEROR (1902)

[I. L. R., 26 Mad., 454]

3.—Rioting with intent to abduct—Indian Penal Code (Act XLV of 1860), ss. 147, 366—
Abduction—Rioting, charge of, whether it would

was not proved: Held that, the intention of the abduction not being proved, and a charge of bare abduction *per se* (without the intention pointed out in the different sections dealing with the subject) not being an offence under the law, the conviction under s. 147 was bad. KHALIL NASTA v. EMPEROR (1901)

[6 C. W. N., 208]

KNOWLEDGE.

See ACQUISITION.

—of commission of offence—

See RIOTING. I. L. R., 28 Calc., 504

KUMAON AND GARHWAL.

[I. L. R., 24 All., 318]

L**LABOURER.**

See ACT—1859—XIII

LACHES.

See SPECIFIC PERFORMANCE—GENERALLY.

[I. L. R., 30 Calc., 265]

LAMENESS.

See **HINDU LAW—INHERITANCE—**
DISVESTING OF, OR EXCLUSION FROM,
AND FORFEITURE OF, INHERITANCE.
[I. L. R., 28 Mad., 133]

LAND.

—acquisition of—

See **LAND ACQUISITION ACT.**

LAND ACQUISITION ACT (X OF 1870).

—Apportionment of compensation-money, principle of—Landlord and tenant—In apportioning compensation-money between a landlord and a tenant, the principle to be followed is, first, to ascertain the amount of rent payable to the landlord and capitalize that rent at so many years' purchase, and then to put a money value upon the chance (if there be any) of an enhancement of the then existing rent. These two sums the landlord is entitled to get, and the tenant is entitled to get the balance. **SHAMA PROSUNNO BOSE MOZUMDAR v BRAHODA SUNDARI DAS (1900)**. . . **I. L. R., 28 Calc., 146**

—ss. 9, 16, 40—

—Notice—Persons known or believed to be interested—Power to take possession—Festling of land absolutely in Government—Land acquired under the provisions of Act X of 1870 vests absolutely in the Government, free from all encumbrances, after a *bond fide* award or reference by the Collector has been made and possession taken, even when no special notice, as required by s. 9 of the Act, has been served on persons known or believed to be interested therein. **North London**

LAND ACQUISITION ACTS (XVIII OF 1885 AND I OF 1894).

—Compensation—Apportionment of compensation-money—Landlord and tenant—Rent fixed in perpetuity—Bengal Tenancy Act (VIII of 1885), s. 60, sub-s (2)—In apportioning compensation-money, awarded under the Land Acquisition Act, between the landlord and the tenure-holder, the Court ought to proceed on the principle of ascertaining what the value of the interest of the landlord is on the one hand, and that of the tenant on the other, and to divide the sum awarded between them in accordance with these values. Where the

LAND ACQUISITION ACTS (XVIII OF 1885 AND I OF 1894)—concluded.

I. L. R., 7 Calc., 555; Datta v. Noto Krishna Mookerjee (1899), I. L. R., 17 Calc., 144; Rajah

LAND ACQUISITION ACT (I OF 1894).

See **APPELLATE COURT—INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT**. **I. L. R., 30 Calc., 501**

See **BOMBAY CITY IMPROVEMENT ACT.**
[I. L. R., 27 Bom., 424]

See **CONTEMPT OF COURT—PENAL CODE,**
s. 174 . . . 5 C. W. N., 131

L—Compensation—Compensation, determination of—Compensation for severance.—Under the provisions of the Land Acquisition Act (I of 1894), part of an owner's tea garden land was taken, and by the construction of a railway line several acres of land to the south of the line were cut off from the northern portion of the garden, where the residence of the manager, and all buildings and offices connected with

2—Landlord and tenant—Patidar, whether entitled to abatement of rent and compensation—Proportion—Principal—Where a

—s. 6—

See **ZAMINDAR**. . . **I. R., 23 I. A., 121**

LAND ACQUISITION ACT (I OF 1894)

—continued—

—ss. 8 to 8, 9 (2), 11, 39 to 41, 48, 50 (2)—

—Owner—Land—Notice of inquiry—Govern-

sition Collector extends, under the Act of 1894, over

interests and sole judge as to whether the land is required for the construction of work and whether that work will prove useful to the public. This Court is not competent to question the validity of the proceedings under s. 40 of the Act. It is not open to this Court to discuss the sufficiency of the inquiry made by the Collector, or his qualifications. The Local Government is sole judge. S. 41 of the Land Acquisition Act makes the Government sole

person to make statements relevant to the matters which he has to inquire into. *Durga Dass Rakshit v. Queen Empress* (1900), I. L. R., 27 Cal., 620, followed. Neither the inquiry nor the proceedings held by the Land Acquisition Collector are invalid. There is no provision under s. 39 of the Act that the consent of Government should be given after the agreement is executed, and that such consent should be notified by a Resolution in the Gazette. *EXRA v. SECRETARY OF STATE* (1902)

I. L. R., 30 Cal., 38; s.c., 7 C. W. N., 249

ss. 11, 18, 31 and 33—

portionment of compensation—Award by effect of, when there has been no reference to Civil Court—Right of claimants to

LAND ACQUISITION ACT (I OF 1894)

—continued.

—ss. 11, 18, 31 and 33—concluded.

bring suit in Civil Court for adjudication of their claims in such case—Limitation—Construction of Statute—Construction of grant—Hindu widow—Life-interest, amount of compensation due to—As between the claimants *inter se*, an award by a

award has been made by the Collector, but has not been followed by a reference to the Civil Court under

a reference under s. 18 of the Act, can maintain, against any or a part to establish under the Land Acq.

Bam Bandhu Rai (1891), I. L. R., 7 Cal., 888, followed. The provisions of s. 33 of the Land Acquisition Act show that the limitation provided by proviso (a), sub-s (2), of s. 18 of the Act is not intended to be an absolute limitation as to time. *PUNJABATI DAI v. PUDMANAND SINGH* (1903)

[7 C. W. N., 538

—ss. 18 (d) and 23—

—Level-crossing across a private road—A person is entitled to compensation, under clause fourthly of s. 23 of the Land Acquisition Act, in respect of a Railway Company having made the "level-crossing" across his private road giving access to his house, if he can show that he sustained damage or loss by reason of his other property having been injuriously affected. *Glover v. The North Staffordshire Railway Company* (1851), 16 Ad. & El. Q. B. R., New Series, p. 912; the Metropolitan Board of Works v. McCarthy (1874), 7 H. L. E. & I. App. 243, referred to. A Collector, in making a reference to the Civil Court, should state the grounds on which the amount of compensation was determined. *MADHUSUDAN DAS v. COLLECTOR OF CUTTACK* (1901) 6 C. W. N., 403

—s. 23—

—s. 30—

—Lands waste from time immemorial taken up—Compensation awarded—Amount claimed by

LAND ACQUISITION ACT (I OF 1894)

—continued.

—B. 30—concluded.

mirasidars and *shrotramdars*—Persons entitled—Certain lands which had been waste from time immemorial were taken up by Government, and compensation was awarded. Claims were made by the *mirasidars* for the amount so awarded. The rights of the Government in the lands had been alienated by Government to certain *shrotramdars*, who also claimed to be entitled to the amount awarded as compensation. Held, that the *shrotramdars* were entitled. *SIVANTHA NAICKEN v. NATTU RANGA CHARI* (1902)

[I. L. R., 26 Mad., 371]

—ss. 30 and 53—

—Civil Procedure Code, s. 32—Parties—Reference by Collector as to apportionment of compensation—Addition by Judge of party to reference—Where, under s. 40 of the Land Acquisition Act,

CHAND + JAGANNATH PRASAD (1903).

[I. L. R., 25 All., 138]

—B. 31—

See ante, ss. 11, 18, 31 AND 53.

—ss. 31 and 32—

—Land taken up for public purposes, such land being in possession of a Hindu widow holding in right of her deceased husband—How compensation in respect of such land should be allotted—Where land which was taken up by the Government under the Land Acquisition Act for public purposes was held at the time by two widows holding the usual

—B. 32—

—Person having "no power to alienate"—

AYERGAL v. AHAMMED ALI RAZA AYERGAL (F.R. 1902). I. L. R., 26 Mad., 287

—B. 33—

See ante, ss. 11, 18, 31 AND 33.

LAND ACQUISITION ACT (I OF 1894)

—concluded.

—ss. 39 to 41, 48, 50(2)—

See ante, ss. 8 to 8, 11 (2), 11, 39 to 41, 48, 50 (2).

—B. 53—

See ante, ss. 30 AND 53.

LAND IMPROVEMENT LOANS ACT, 1883 (XIX OF 1883).

—B. 7 (1) (a)—

—Revenue Recovery Act (Mad. Act II of 1864), s. 42—Advances to owner on two pieces of land—Security taken on one alone—Sale of the other piece in respect of advance—Validity—N held two pieces of land on patta, and obtained a loan from Government, under Act XIX of 1883, for the improvement of one of them, namely, No. 315. The

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876).

See BENGAL TENANCY ACT, s. 60

(5 C. W. N., 482)

See RENT, SUITE FOR 7 C. W. N., 720

—ss. 42, 44 and 78—

—Land registration—Registration of share in an estate—Share in specific mouzas in an estate—The Land Registration Act (Bengal Act VII of 1876)

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876)—concluded.

— ss. 42 and 78—

Land registration—Co-sharer's interest by amicable settlement—Registration of proprietor's share—Partition Act (Ben. Act V of 1897), s. 12—The Land Registration Act (Ben. Act VII of 1876) requires the registration by the various proprietors of their shares in the estates only, and does not seem to contemplate a registration of shares in separate *mouzas* in the estates. The provisions of s. 42 of the Act have therefore no application to the case of a co-sharer who, by an amicable arrangement between the co-sharers, has been placed in possession of a larger share than his registered share in some *mouzas*, and of a less share or no share in others.

— s. 56—

See PUBLIC SERVANT.

[I. L. R., 29 Calc., 236]

— s. 78—

See ante, ss. 42, 44 AND 78.

See ante, ss. 42 AND 78.

Actual registration—Order of Civil Court for registration—The Land Registration Act requires actual registration of name in order to enable a person to recover rent, and a mere order of the Civil Court for registration is not sufficient. *UGRA MOHUN THAKUR v. BEDDISHI ROY* (1900)

[5 C. W. N., 360]

— s. 82—

LAND-HOLDERS.

— responsibility of—

See RIOTING . I. L. R., 28 Calc., 504

LAND-REVENUE.

See CONTRIBUTION, SUIT FOR—VOLUNTARY PAYMENT.

[I. L. R., 28 Bom., 437]

See DEKKHAN AGRICULTURISTS' RELIEF ACT, s. 3 . I. L. R., 25 Bom., 344

See EVIDENCE—CIVIL CASES—MAPS.

30 Calc., 291

LAND-REVENUE—continued.

See INTEREST—MISCELLANEOUS CASES—ARREARS OF REVENUE.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS.

See LIMITATION ACT, 1877, SCH. II, ARTS. 120 AND 110.

[I. L. R., 25 Bom., 556]

See NORTH-WEST PROVINCES RENT ACT, s. 23 . I. L. R., 24 All., 465

See PENSIONS ACT, s. 3 AND s. 6.

[I. L. R., 25 All., 73]

See SALE FOR ARREARS OF REVENUE.

1.—Assignment of—Direction by Government to holder on raiyatwari tenure to pay crop assessment to charity in lieu of direct payment by Government—Effect—Rights of trustees of charity—Limitation Act (XV of 1877), Sch. II, Arts. 110, 120—Prior to 1863, Government had been paying from the public treasury Rs. 238-5-8 to the trustees of a charity (of which the plaintiffs in this suit were the managers) in that way, Government in

appeared to have been performed. In 1893, the assessment for the first crop was raised, the net increase being payable to Government direct. In 1893, the trustees brought the present suit to re-

with its rights to such revenue. Assuming the plaintiffs were assignees of Government, they could not proceed under ss. 2 and 42 of the Revenue

Limitation Act, and consequently it fell within Art. 120. *KASTURI GOPALA AYYANGAR v. ANANTARAM TRIVARI* (1903) . I. L. R., 26 Mad., 730

3.—Enhancement of assessment—Land-revenue in Bombay—Bombay Act II of 1876—Sale of land by Government to a purchaser assessed at a certain rate—Subsequent enhancement—Vendor and purchaser—Estoppel—Evidence Act (I of 1872), s. 115—Certain lands in Bombay, consisting of three separate plots, were held by the Trustees of the Free Church of Scotland Mission under a grant from Government (no deed, however being executed) for the purposes of a school for native girls. No assessment was paid for a part of

LAND-REVENUE—continued.

the land, and a merely nominal assessment was paid for the rest. Being desirous of transferring the school to another locality, the Trustees obtained the consent of Government to sell the land, and, in order to put the Trustees in a position to sell, certain indentures were executed to the Trustees. Plot 1 was conveyed by Government to them, "their heirs and assigns for ever", subject to a right of resumption, but without any mention of assessment. Plots 2 and 3 were conveyed by Government to them, "their heirs, executors, administrators and assigns for ever," but in this case the conveyance was "subject to the

Government tax." The Trustees desired to accept this offer, and communications took place between them and Government with reference to it. On the 21st June, 1887, they wrote to Government stating that it was most desirable that the offer should

ment to the Collector of Land-revenue to say "what the land would be assessed at for the purposes of the land-revenue, it being assumed that the land was of the pension and taxtenure." On the 11th July, 1887, the Government passed a Resolution in reference to this request, as follows: "The land in question will be liable in the purchaser Mr Janardhan Gopal's hands to be assessed under the rules ordinarily applicable to land of the same description. The Collector should be desired, on the application of either the Secretary of the Free Church Mission or of the purchaser, Mr Janardhan Gopal, to state

be assessed at the rate of nine pies per square yard

to the payment of taxes, rates, charges, assessments

LAND-REVENUE—continued.

January, 1888, the land was conveyed to Janardhan Gopal, the purchaser. The parties to the deed were the Trustees of the Mission, the Secretary of State, and the said Janardhan Gopal, and it recited that the Trustees had agreed for the absolute sale of the land to Janardhan Gopal, and with the consent of Government it conveyed the same to him,

property became vested (under a partition) in the plaintiff, who was Janardhan Gopal's son. Until 1899 the assessment of nine pies per square yard was paid, but in August, 1899, the plaintiff received from the Collector a notice under s. 8 of Bombay Act II of 1876 that the assessment was enhanced to six annas and six pies per square yard per annum. The plaintiff thereupon filed this suit in the Court of the Revenue Judge under s. 14 of Bombay Act II of 1876, contesting the legality of the enhancement. The Revenue Judge dismissed the suit. On appeal to the High Court: *Held*, reversing the decree and setting aside the order of enhancement, that the plaintiff had a right to hold the land for ever on payment of assessment at the rate of nine pies per square yard per annum, and that the Government had no right to enhance the said rate. Janardhan Gopal had purchased the property out-and-out for its full value. To such a purchaser the right to enhance the assessment should in all fairness have been clearly disclosed

of the purchase, was, under the circumstances, such as to create and encourage in the purchaser as a reasonable man the belief that he was purchasing property substantially worth Rs3,000, and that Government were not silently reserving to themselves an unfettered right to destroy the value of that property and practically to confiscate that which had been sold. *DADORA JANARDHAN v. COLLECTOR OF BOMBAY* (1901). I. L. R., 25 Bom. 714

3. —Land-revenue in Bombay—Bombay Act II of 1876—Purchase of land from Government—Encroachment—Acquisition of land under s. 26 of Bombay Act II of 1876—Vendor and purchaser—Eitoppel.—The plaintiff was the owner of certain land in Bombay, consisting of three separate plots which had been bought from Government at different times. Plot No. 1 had been bought by the plaintiff's father in 1880, to whom the Collector of Bombay, with the

KHOTI SETTLEMENT ACT (BOM. ACT I OF 1880)—concluded.**—s. 8—concluded.**

not appear to hold their lands on any terms agreed upon between the *khots* and themselves, such tenants are entitled, under s. 8 of the *Khoti Settlement Act* (Bombay Act I of 1880),

—s. 33—

See RES JUDICATA—MATTERS IN ISSUE—
SUIT FOR RENT

[I. L. R., 26 Bom., 25]

KIDNAPPING.

1.—Lawful guardianship—*Penal Code (Act XLV of 1860), ss. 361, 363, 366—Kidnapping from lawful guardianship—“Lawful guardian”—Continuance of parent's possession though physical possession temporarily with another.*—S, a girl of the age of eight years, lived ordinarily under the guardianship of her father. A sister of S was married to a nephew of one K, and, with her husband, lived in the house of K. S, with her father's knowledge and consent, visited her sister in K's house, and had

KIDNAPPING—concluded.

Purpose and for a limited time does not determine the father's rights as guardian or his legal possession for the purposes of the criminal law. If the facts are not inconsistent with a continuance of the father's legal possession of the minor, the latter must be held to be in the father's possession or keeping, even though the actual possession should be temporarily with a friend or other person. *JAGAN-SADHA RAO v. KAMARAJI* (1900)

[I. L. R., 24 Mad., 284]

2.—Offence when complete.—The offence of kidnapping is complete when the minor is actually taken from lawful guardianship, and it is not an offence continuing as long as the minor is kept out of such guardianship. *CHAKRITY v. EMPEROR* (1902)

[I. L. R., 28 Mad., 454]

3.—Rioting with intent to abduct.—*Indian Penal Code (Act XLV of 1860), ss. 147, 366—Abduction—Rioting, charge of, whether it would necessarily fail if intention of abduction is not proved.*—Where a person was charged for abduction, under s. 366, Indian Penal Code, and also for rioting, under s. 147, with the common object of abducting a certain woman, and the Court below convicted the accused under s. 147, but acquitted him of the offence under s. 366 on the ground that the intention of the abduction as mentioned in the charge was not proved. Held that, the intention of the abduction not being proved, and a charge of bare abduction *per se* (without the intention pointed out in the different sections dealing with the subject) not being an offence under the law, the conviction under s. 147 was bad. *KHALIL NISYA v. EMPEROR* (1901)

KNOWLEDGE.

See ACQUIESCENCE.

— of commission of offence—

See RIOTING. I. L. R., 28 Calc., 504

KUMAON AND GARHWAL.

—High Court for.—For the purposes of the Legal Practitioners' Act, 1879, the Commissioner of Kumaon is the High Court for the Province of Kumaon and Garhwal. IN THE MATTER OF THE PETITION OF PADMA DAT JOSHI (P.R., 1902)

[I. L. R., 24 All., 348]

L**OURER.**

See ACT—1859—XIII.

RES.

See SPECIFIC PERFORMANCE—GENERALLY.
[I. L. R., 30 Calc., 265]

LAND-REVENUE—continued.

the land, and a merely nominal assessment was paid for the rest. Being desirous of transferring the school to another locality, the Trustees obtained the consent of Government to sell the land, and, in order to put the Trustees in a position to sell, certain indentures were executed to the Trustees. Plot 1 was conveyed by Government to them, "their heirs and assigns for ever", subject to a right of redemption, but without any mention of assessment. Plots 2 and 3 were conveyed by Government to them, "their

(*infer aliud*) that the whole property should be conveyed to him "as freehold tenure or for a nominal Government tax." The Trustees desired to accept this offer, and communications took place between them and Government with reference to it. On the 21st June, 1887, they wrote to Government stating that it was most desirable that the offer should be accepted, but that the purchaser required that the amount of assessment on the land should not exceed what was payable in respect of pension and tax tenure in the same locality, and they requested the Government to ask the Collector of Land-revenue to say "what the land would be assessed at for the purposes of the land-revenue, it being assumed that the land was of the pension and tax tenure." On the 11th July, 1887, the Government passed a Resolution in reference to this request, as follows: "The land in

of the purchaser, Mr. Janardhan Gopal, to state what the assessment of the land-revenue will be and what are the rules affecting the amount of the assessment." Acting on this Resolution, Messrs. Ardour, Hornum & Co., as attorneys for both the Trustees and the purchaser, wrote to the Collector on the 14th July, 1887, setting forth the above Resolution, and requesting him to furnish the desired information. On the 25th July, 1887, the Collector replied: "I have the honour to inform you that the land will be assessed at the rate of nine pies per square yard

to the payment of taxes, rates, charges, assessments leviable or chargeable in respect of the premises or

LAND-REVENUE—continued.

the Trustees had agreed for the absolute sale of the land to Janardhan Gopal, and with the consent of Government it conveyed the same to him, "his heirs, executors, administrators and assigns

charged the said Janardhan Gopal, his heirs, exe-

son. Until 1899 the assessment of nine pies per square yard was paid, but in August, 1890, the plaintiff received from the Collector a notice under s. 8 of Bombay Act II of 1876 that the assessment was enhanced to six annas and six pies

should in all fairness have been clearly disclosed.

conduct of Government, coupled with the statement of Government made on their behalf for the purposes

sold. **DADORA JANARDHAN v. COLLECTOR OF BOMBAY** (1901). I. L. R., 25 Bom., 714

3.—**Land-revenue in Bombay—Bombay Act II of 1876—Purchase of land from Government—Encroachment—Acquisition of land under s. 26 of Bombay Act II of 1876—Vendor and purchaser—Estoppel.**—The plaintiff was the owner of certain land in Bombay, consisting of three separate plots which had been bought from Government at different times. Plot No. 1 had been bought by the plaintiff's father in 1890, to whom the Collector of Bombay, with the

LAND-REVENUE—continued.

sanction of Government, had sold it at "the rate of Rs 1 a square yard and ground rent at 30 pies per *burga* of 60 square yards per annum." Plot No 2 was acquired by encroachment, and was sold in 1884 to the plaintiff's father by the Collector under cl. 2 of s. 26 of Bombay Act II of 1876, five times the value of the land being paid, and assessment being charged as provided by that section. Plot No. 2 was bought in 1905 for Rs. 1000 and was sold in 1909 for Rs. 1000.

year the Collector served the plaintiff with a notice enhancing the assessment to three annas per square yard per annum. The plaintiff thereupon filed this suit under s. 14 of Bombay Act II of 1876. The *Dewan* *Taluk* *Admiral* *the* *sub*, with costs.

ated to be at a ground rent of 80 pies per *burga*, and this established a specific limit to the assessment. Plot No 2 was sold by the Collector under s. 26 of Bombay

the reasonable inference from the known facts was that the limit was fixed as in the case of plot No. 1. **JETHABHOY RUTTONSEY v. COLLECTOR OF BOMBAY** (1901) I. L. R., 25 Bom., 752

4.—*Land reclaimed from sea granted in perpetuity by village officers at fixed rent—Grant adopted by Government—Money expended on land in belief that the assessment would not be enhanced—Estoppel*—In 1801 the *Gadkare* (village officers) of a village, who were responsible to Government for the revenue, granted the land in suit to the plaintiff's grandfather, who undertook to keep in repair a certain embankment necessary for the purpose of protecting the village from the sea. The writing given by the *Gadkare*

to treat the land in question as "*Katuban*," that is, as land held in perpetuity at a fixed rent. The plaintiff and his predecessors had improved and spent money on the land. It was assessed as "*Katuban*" until

was "*Katuban*." Held that the plaintiff was entitled to recover the sum claimed. The facts of the case

LAND-REVENUE—continued.

brought it within the equitable principle which protects one who expends money on the improvement of land under an expectation of an interest therein created or encouraged by its owners. **SECRETARY OF STATE FOR INDIA v. COUNCIL v. DATTATRAYA RAYJI PAI** (1901) I. L. R., 26 Bom., 271

5.—*Bombay City Land-revenue Act (Bom. Act II of 1876), ss 8 and 9—Settlement of assessment—Meaning of "settlement"—Notices of enhancement—No necessity of notice to assessors of permanent settlement in*

tenure at a fixed assessment, and, secondly, because there had been no "settlement" with him as required by Bombay Act II of 1876, inasmuch as he had received no prior notice from the Collector of the intention to enhance the assessment. Held (1) that there was no evidence in the case to show that the assessment had been permanently fixed; (2) that the words "settlement of assessment" in s. 8 of the Bombay City Land-revenue Act (Bom. Act II of 1876) do not by themselves imply the necessity of prior notice to the superior holder before the assessment is enhanced; they mean no more than that when the settlement is fixed the fact shall be communicated to the superior holder. **VINAYAK ATKARAM v. COLLECTOR OF BOMBAY** (1901)

[I. L. R., 26 Bom., 339]

6.—*Local Fund cess—Bombay Act III of 1869, s. 8—Liability for Local Fund cess—Village given by ruling Chief by way of maintenance (jivak giras), liability to Local Fund cess of—Superior holder—Voluntary payment*

LAND-REVENUE—concluded.

of the village, and as such responsible to Government for the Local Fund cess. This view was subsequently confirmed by the Secretary of State. Thereupon the plaintiff filed this suit for a declaration that the defendants were not the superior holders of the village and had no right to pay the Local Fund cess direct to Government, but that he was entitled to recover the same from them and pay it over to Government. He also prayed to

to the declaration prayed for. The plaintiff was not the 'superior holder' of the village of Kamijala, and was not responsible for the Local Fund cess nor under any liability to pay it. The supreme holders under s. 106 of the Land-revenue Code (Bombay Act V of 1879) were the defendants as *Bhayaia*, to whom the village had been granted as '*jiwak giras*'. They were primarily responsible to Government. *Held, also*, that the plaintiff, as Chief of the State, had such an interest in the village of Kamijala as would entitle him to pay the cess to Government if there were any danger of forfeiture in consequence of non-payment by the defendants. In such a case s. 69 of the Contract Act (IX of 1872) would enable him to sue for reimbursement. But in the present case it did not appear that any such emergency had arisen or was likely to arise. S. 70 of the Contract Act had no application, for it could not be said that the plaintiff had lawfully made payments for the defendants. He had no authority from them, and was under no obligation to pay. The plaintiff was, therefore, not entitled to recover the cess paid from 1893 to 1895 as claimed in the plaint. *GORDHANLAL DARBAR SHRI SURAJMALJI* (1902) . . . I. L. R., 28 Bom., 504

LAND-REVENUE ACT (BOMBAY).

See BOMBAY LAND-REVENUE CODE.

LAND-REVENUE SALES ACT (BENGAL), 1859.

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LAND-TENURE.

See SERVICE TENURE.

[I. L. R., 28 Mad., 403]

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[7 C. W. N., 607]

1. CONSTITUTION OF RELATION.

(a) ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT.

1.—Receipt of rent from a person as sarbarahakar.—The original tenant's name also appearing on the receipt as tenant, effect thereof—Whether it amounts to recognition of the sarbarahakar as tenant.—The mere fact of rent having been received from a certain person does not amount to a recognition of that person as a tenant. Where the old tenant's name occurred in the rent receipts under the heading "tenant's name," and the name of the purchaser from the tenant occurred under a different heading as sarbarahakar: Held that the landlord by these receipts did not mean to recognise the purchaser as a tenant. *Bhokhures Bunik v. Aka Golam Ali* (1871), 16 W. R., 97; *Gaur Lal Sirkar v. Ramwar Bhumik* (1870), 6 B. L. R., App., 92, relied on. *Gadadhar Banerjee v. Khettur Mohan Surmah* (1867), 7 W. R., 460; *Ram Gobind Roy v. Dushobhoojah Debes* (1872), 19 W. R., 135, distinguished. *RANMOY PURKAIT v. SRINATH MOYIA* (1902) 7 C. W. N., 139

(b) ACKNOWLEDGMENT OF TENANCY BY PAYMENT OF RENT.

2.—Suit by landlord for possession—Denial of landlord's title by tenant—Effect of payment of rent—Onus of proof—Payment of rent by agent of tenant—How far principal bound—Rent paid by mistake—Adverse possession—Possession—Act of ownership on part of unclaimed land—In 1899 the plaintiff brought this suit, against the Secretary of State and the Collector of Salt Revenue, to recover possession of certain land which had for many years been in actual possession of the Customs officials of Government, and for which these officials had paid rent to the plaintiff and his predecessor. In their

LANDLORD AND TENANT—continued**1. CONSTITUTION OF RELATION—concluded.****(b) ACKNOWLEDGMENT OF TENANCY BY PAYMENT OF RENT—concluded**

written statement the defendants claimed that the land belonged to Government, and pleaded that, although it was true that they had paid rent for some years to the plaintiff, yet that such payments had been made by mistake. Held that the admission by the defendants that they had paid rent to the plaintiff

2. OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION.

3.—Disturbance by landlord of peaceable possession—Suspension and apportionment of rent.—A landlord is not entitled to recover rent for the lands in the possession of a tenant, who holds a tenure under a lease which reserves rent at a certain rate per *bigha*, when he has dispossessed the tenant from the other lands of the tenure, inasmuch as it cannot be said that each *bigha* of land is separately assessed and separately chargeable with rent. *Dhunput Singh v. Mahomed Kasim Ispahain* (1896), *I. L. R.*, 24 Cal., 296, distinguished. *HARRO KUMAR CHOWDHURANI v. PURNA CHANDRA SARKOGA* (1900). *I. L. R.*, 28 Cal., 188

4.—Landlord bound to put tenant into[*O. W. N.*, 310]

5.—Ouster of tenant by paramount owner—Claim by tenant against his lessor for compensation for such ouster—Lease—Covenant for quiet enjoyment—Damages—Measure of damages—Transfer of Property Act (IV of 1882), s. 108, cl. (c).—The words "without interruption,"

LANDLORD AND TENANT—continued.**3 OBLIGATION OF TENANT TO KEEP HOLDING DISTINCT.**

6.—Confusion of boundaries.—Where, owing to the negligence of the tenant, the land demised becomes confounded with other lands, the tenant, unless he can ascertain the former, is bound to make good to the landlord the quantity of the land to which the latter is entitled. *ISMAIL KHAN MAHOMED v. BROUGHTON* (1901)

[*O. W. N.*, 848]**4 LIABILITY FOR RENT.**

7.—Interruption of tenancy—Rent-suit—Disturbance of quiet possession by landlord—Liability to pay rent—Eviction, not complete.—The law does not require that there should be a complete eviction of the lessee in order that he may be exempted from liability to pay rent. *Dhunput Singh v. Mahomed Kasim Ispahain* (1896), *I. L. R.*, 24 Cal., 296, distinguished. *which he*
LIAB.

[*O. W. N.*, 353]**5 PAYMENT OF RENT.****GENERALLY.**

8.—Lease by tenant-for-life—Rent payable during month—Death of tenant-for-life prior to end of month—Claim by assignee of tenant-for-life

[*I. L. R.*, 28 Mad., 540]**6 NATURE OF TENANCY.**

9.—Dwelling house—Transfer of Property Act (IV of 1882), s. 112—Determination of tenancy—Commencement of occupation of dwelling house—Profession by tenant to hold adversely to landlord—No determination of tenancy—Where a

do so, he must immediately the lessee. A lease granted by B for eleven years B had no title to the land, which really belonged to C. In

LANDLORD AND TENANT—continued.**6. NATURE OF TENANCY—continued.**

tenant enters into occupation of a dwelling-house as a tenant of the landlord, on the basis of a lease.

of Property Act, limitation does not run against the landlord, though the tenant may, in fact, profess to hold the property adversely to the landlord. *Srinivasa Ayyar v. Muthusami Pillai*, I. L. R. 24 Mad., 246, and *Seshamma Shettati v. Chackaya Hegade*, I. L. R. 25 Mad., 507, followed. *RAMASWAMI NAIR v. THAYAMMAL* (1902)

[I. L. R., 26 Mad., 488]

10.—Expectation of grant of land.—Construction.—Expectation raised and acted upon of a grant of land from the proprietor to a person encouraged by him to lay out money thereon.—Irrigation canal.—Waste land of Government.—Stipulation of such land with the consent of the landlord.

by Government, to be made, in the greater part, upon their waste land, at the expense of the predecessor in estate of the plaintiffs. Other land of less extent was obtained for the same purpose, from private owners. The makers of the canal, who were father and son, held in succession, for the term of the District Revenue Settlement, a lease of the dues collected from those who frequented the above tracts for pasturage and sparse cultivations. Held that the undertakers acquired a proprietary interest in so much of the Government lands, taken for the purpose of the canal, as was required for its construction.

an end with the termination of the current settlement, the son obtained from Government a grant of an estate assessed to the revenue in the tracts within reach of the irrigation, together with an *inam* of Rs. 5,000 a year for two lives. Afterwards, in a *sanad*, stating the grant of this estate, Government expressly reserved the right to take possession and control of the canal and to manage the irrigation for as long as they wished, without paying compensation. This

LANDLORD AND TENANT—continued.**11. NATURE OF TENANCY—continued.**

possession was taken. This suit was brought for a declaration of the rights acquired by the makers of the canal, and for other relief, on the title of their descendants, the plaintiffs. Held that, at the date of the suit, the canal was in the possession of the Government.

the effect of the reservation of the grant was that Government could assume the control of the canal and the irrigation without being in the position of receivers, managers or trustees for the proprietors, or accountable to them for the profits. The reservation did not empower Government to confiscate the canal, nor did they acquire any proprietary right in the canal.

11.—Permanent tenancy.—Suit for ejectment.—Tenancy, origin of which not known.—Presumption as to a tenancy being a permanent one.—Long possession, transfer of the holding by succession and purchase, erection of pucca buildings with the permission of the landlord, by successive tenants, whether sufficient for a presumption that the tenancy is a permanent one.—Although the origin of a tenancy may not be known, yet if there is a long possession, and the tenant has erected pucca buildings, and the holding has been transferred by succession and purchase, in which the landlord acquiesced or of

12.—Long possession, and instances of transfer and succession.—Notice.—Homestead land in municipal town.—The fact of long possession, and instances of transfer and succession, may raise a presumption in favour of the permanency of a tenancy. *Taruk Podo Ghosal v. Shyama Churn Napti* (1931), 8 C. L. R., 80; *Prasanna Coomares v. Sheikh Rutton Bepary* (1877), I. L. R. 3 Calc., 699, referred to *DR. B. MOHUN DAS v. BAKHAL CHANDRA ROY CHOWDHURY* (1901) 5 C. W. N., 801

13.—Ejectment.—Origin of tenancy.—Presumption as to permanent character of tenancy.—Where tenancies were created by *kobbligat* or *pattar* which did not contain any words of inheritance, and which limited the tenant's right to the term of the possession of the landlord, who

LANDLORD AND TENANT—continued.

6. NATURE OF TENANCY—continued.

happened to be a *mutacalli*, and there was no recognition of the incidents of old leases in the grant of new leases to new tenants, except payments of rents at

sufficient to warrant the inference that the tenancy was, when first created, intended to be permanent, or was subsequently, by agreement, converted into

permanent, and had not subsequently been converted into such. **ISMAIL KHAN MAHOMED v. KALI KRISHNA MONDOL** (1901) 8 C. W. N., 134

15. ————— *Ejectment—Origin of tenancy—Land whether originally agricultural—Successive transfers, and payment of rent at unvaried rate—Presumption as to permanent character of tenancy—Where a tenancy was created by a *kabuliyat* and *patta* not containing any words of inheritance or of perpetual tenancy, the mere facts that the land has been held by tenants at an unchanged rate of rent for a very long period, and that it has been the subject of successive transfers, do not warrant the inference that the tenancy was, when*

inference that the tenant had permanent rights in the land where it is clear that the land had long ceased to be agricultural: the words "you are to enjoy the land with great pleasure (*param sukha*)" do not create a permanent tenancy. **ISMAIL KHAN MAHOMED v. NILRATAN MONDOL** (1902)

[8 C. W. N., 352]

16. ————— *Tenancy, permanent or not—Ejectment—Heritable right—Evidence—Presumption—Onus—In the absence of words importing it, the hereditary character of a tenure may be supplied by evidence of long and uninterrupted enjoyment, and of the descent of the tenure from father to son. **Baboo Gopal Lal Thakur v. Tuluck Chunder Rai** (1865), 10 M. L. A. 153, at p. 191, and **Rajah Salyasaron Ghoshal v. Mohesh Chunder Mitter** (1869), 2 B. L. R. (P. C.) at*

LANDLORD AND TENANT—continued.

6. NATURE OF TENANCY—continued.

p. 23, followed. The presumption of the permanency of a holding was legally made in a case where the following facts were found, viz., possession at a uniform rent for some 100 years, the property descending from father to son, various transfers, many of

years. In a suit for ejectment, where the defendant sets up a permanent tenancy, the onus is upon the defendant to show this. A permanent tenancy is not created by the acceptance by a purchaser of containing no conveyance of the land, confirming the pre-existing holding, and not of creating a new one. *Held*, upon a construction of the *patta* of the 21st October, 1835, that it was only a confirmatory *patta*, in fact, a *kharija patta*, and that it

observations would apply to the *pattas* dated 8th November, 1835, and 29th May, 1838. **ISMAIL KHAN MAHOMED v. AGRORE NATH MUKERJEE** (1903)

[7 C. W. N., 734]

17. ————— *Void lease—Lessee's adverse possession—Disclaimer of landlord's*

was obtained to the leases. These three leases were not registered. The Bombay Minors' Act came into force in the Panch Mahala in 1835, and in 1836 the

LANDLORD AND TENANT—continued.

C. NATURE OF TENANCY—continued.

Collector obtained a certificate of administration to the plaintiff's property under that Act. The plaintiff came of age on the 8th December, 1895, but the administrator did not hand over his property to him on that day. On the contrary, the then Collector, by his own order, dated the 20th November, 1895 (Ex-

sanction from the Government or the District Court by which he had in the first instance been granted a certificate of administration (Exhibit 62). This lease

sanction from the Government or the District Court by which he had in the first instance been granted a certificate of administration (Exhibit 62). This lease

that there can be adverse possession of a limited interest in property as well as of the full title as owner. As it appeared that the defendant agreed

been in adverse possession as a permanent tenant. Held, further, that, as the plaintiff had not brought the suit within three years of attaining his majority, the defendant had obtained by adverse possession a

LANDLORD AND TENANT—continued.

G. NATURE OF TENANCY—concluded.

right to hold the lands as against the plaintiff as a permanent tenant. *Per BATTY, J.*—The authorities show that a tenant in India is not precluded by an admission of tenancy from showing that the nature of the tenancy assumed by him to the landlord was

person representing the landlord's interests, of a right inconsistent with that claimed by the landlord to treat him as a tenant-at-will or from year to year, would be a disclaimer of the landlord's title. *Firion v. Moat (1881), 16 Ch. Div., 730*, relied on. A landlord merely by receiving rent cannot preserve his right to other claims continuously denied by the tenant. The fact that such assertion and enjoyment are not challenged does not change their adverse

(*per BATTY, J.*) : "A document inadmissible under s. 49" (of the Registration Act) "could not, I think, be used as evidence of delivery of possession." But, seeing that the Legislature has advisedly rejected,

by a person whose claims were admittedly limited to the rights enumerated in such document. *FATE-SINGH DIPSANGHI v. RAMANJI ARDESHIR DALL (1903)*. I. L. R., 27 Bom., 515

7. HOLDING OVER AFTER TENANCY.

18.—*Tenancy from year to year—Transfer of Property Act (IV of 1922), ss. 116, 117.*—When an agricultural tenant holds over, his tenancy is renewed from year to year. *Kishore Lal Das v. The Administrator General of Bengal (1937), 2 C. W. N., 808*, doubted. *ADMINISTRATOR GENERAL OF BENGAL v. ASRAF ALI (1900)*. I. L. R., 28 Cal., 237

19.—*Lease—Tenant holding over—Assent of landlord—Liability for rent after expiry of term—Transfer of Property Act (IV of 1922), s. 116.*—The defendant held a share of a *khoti* village from the plaintiff, under a *kabuliyat* dated 30th June, 1890, for a period of five years. This suit was filed to recover from him the rent due under it for the years 1899, 1899 and 1900. He pleaded that the *kabuliyat* had expired on 30th June, 1895, and that

LANDLORD AND TENANT—continued.**7. HOLDING OVER AFTER TENANCY—concluded.**

subsequently to that date he held possession, not of the plaintiff's share as his tenant, but of the whole village as managing Agent, and that, therefore, the plaintiff was not entitled to rent from him, but was entitled merely to his (the plaintiff's) share of the profits of the village. It appeared, however, that, though the *Aduliyat* had expired in June, 1895, the plaintiff in 1897 had sued the defendant for the rent due under it for the four years 1893-1894 to 1896-1897, and had obtained a decree. Held that the decree in that suit was an adjudication that the defendant continued in possession after the date of the

8. TRANSFER BY LANDLORD.

20.—*Bengal Tenancy Act (VIII of 1885), s. 72—Transfer of landlord's interest—Liability to pay rent—Payment to transferor—Notice by transferor and not by transferee—Where a landlord transferred his interest to another person, and the*

21.—*Mortgage of holding by landlord to tenant—Mortgagee's rights as tenant not merged in his rights as mortgagee—The fact of a tenant's taking a mortgage of land comprised in his holding from his landlord does not of itself extinguish the tenancy by merging the rights of the tenant in those of the*

9. ALTERATION OF CONDITIONS OF TENANCY.**ERECTOR OF BUILDINGS.**

22.—*Agricultural holdings—Alteration of the character of the holdings by persons entitled to*

LANDLORD AND TENANT—continued.**9. ALTERATION OF CONDITIONS OF TENANCY—concluded.****ERECTOR OF BUILDINGS—concluded.**

permanent rights of occupancy—Remedy—The occupants of certain tops lands, forming portions

right of occupancy. The appropriate remedy was for the houses to be removed and the land restored to the condition in which it was before its character had been altered. *ORR v. MEITHUNKAYA GHOSKAL (1900)* . . . I. L. R., 24 Mad., 65

10. TRANSFER BY TENANT.

23.—*Bengal Tenancy Act—Bengal Tenancy Act (VIII of 1885), s. 85—Sub-letting, restrictions on—Validity of sub-lease granted by raiyat for more than nine years—Sub-lease registered before the commencement of the Bengal Tenancy Act. Where a raiyat has, without the consent of his landlord,*

24.—*Bengal Tenancy Act, s. 85 (3).—The words "the sub-lease shall not be valid" in s. 85 (3), mean that the sub-lease shall not be valid against the landlord. MADAN CHANDRA KAPALI v. JAKI KARTAR (1902)* . . . 6 C. W. N., 377

25.—*Bengal Tenancy Act (VIII of 1885), s. 49, 85 (2)—Permanent lease by an occupancy-raiyat—Registration—Indian Registration Act (III of 1877), s. 17—Estoppel—Suit for ejectment of under-raiyat by purchaser of raiyat's interest—Proof of lease—Meaning of "kaumi"—Where defendant No. 1, an occupancy-raiyat, executed a permanent registered lease in favour of defendant No. 2, who was put in possession*

LANDLORD AND TENANT—continued.

10. TRANSFER BY TENANT—continued.

Tenancy Act, must be regarded as unregistered, and so wholly void under the provisions of s. 17, Registration Act. Also that, although the written lease was void under law, inasmuch as the defendant No. 2 had been let into the land in perfect good faith and was also in possession as an under-*raiyat*, he could not be regarded as a trespasser, but must be taken to be an under-*raiyat* holding otherwise than under a written lease. The tenancy thus being a subsisting one, the defendant No. 2 was entitled to be put in possession after

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26. ———— Bengal Tenancy Act (VIII of 1859) ss. 49 & 50—Demolition of buildings.

demolished, and brought a suit to recover the value of the buildings.

on the ground of mere prior possession, claim the protection afforded by the provisions of s. 49(b) of Bengal Tenancy Act to an under-*raiyat* with a *bond fide* subsisting tenancy, whose permanent lease is void and cannot be put in evidence. *Fazal Sheikh v. Keramuddi Sheikh* (1902), 6 C. W. N., 916, distinguished. *RAKOATI MANDUL v. SHYAMA CHARAN DUTT* (1902). 6 C. W. N., 919

27.—Sale of house—Sale of house by tenant—*Haq-i-chaharum* by whom payable—In the case of a customary right to receive *haq-i-chaharum*, where it does not appear that the *samindar's* right to

28.—Sale of *jote*—*Jote* (holding), sale of—Surplus sale proceeds, claim of, by purchaser—Transferability, question of.—A certain *jote* was sold for arrears of rent obtained against the recorded tenant, and the purchaser of a portion of the *jote* from the latter claimed the surplus sale-proceeds representing the portion purchased by him; the defendant objected to the same on the ground that it was the purchaser of the *jote*; the Lower Courts held that defendant could not prove his purchase;

LANDLORD AND TENANT—continued.

10. TRANSFER BY TENANT—concluded.

the landlord was not a party. Held that the question of the transferability of the *jote* did not arise. *AMRITA NATH ACHARJEE v. ADITYA NATH MOITRA* (1902) 6 C. W. N., 624

11. PROPERTY IN TREES AND WOOD ON LAND.

29.—Trees—Evidence—Presumption—Tenant at fixed rate—Ownership of trees standing on fixed-rate tenant's holding—*Shankar v. Shyam Lal* (1902) 6 C. W. N., 111

30.————Malabar Compensation for Tenants' Improvements Act (Madras Act I of 1867), ss. 2, 8, 4, 6—Malabar Compensation for Tenants' Improvements Act (Madras Act I of 1900), ss. 3, 4, 7, 10—Transfer of Property Act (Act IV of 1882), ss. 109 (h), (o), 117—Right of *kanomdar* to remove and appropriate trees planted by himself—A *kanomdar* is entitled, during the period of his occupation, to remove and appropriate to himself any trees that he has planted, provided that he leaves the property substantially in the state in which he received it. *VASUDEVAN NAMBUDEIRAD v. VALLA CHATHU ACHAN* (S.B., 1900) (I. L. R., 24 Mad., 47)

31.————Property in trees planted by a tenant on his holding.—When a tenant, either occupancy or tenant-at-will, plants trees on his holding, the property in those trees, in the absence of custom or contract to the contrary, attaches to the land, and the tenant has no power of selling or otherwise transferring those trees. *Ajuthia Nath v. Chandra Nath* (1902) 6 C. W. N., 111

32.————Tenants holding *kudicaram* rights in perpetuity—Right to trees growing on the lands—Claim by *samindar*—Madras Regulation XXV of 1803—Madras Regulation IV of 1822—*Shankar v. Shyam Lal* (1902) 6 C. W. N., 111

(I. L. R., 26 Mad., 253)

12. FORFEITURE

(a) BREACH OF CONDITIONS.

33.—Alienation—Permanent lease with covenant against alienation—Subsequent alienation—*Shankar v. Shyam Lal* (1902) 6 C. W. N., 111

LANDLORD AND TENANT—continued.**12. FORFEITURE—continued.****(a) BREACH OF CONDITIONS—continued.**

tions—Sut to erect alienates—Maintainability—Transfer of Property Act (IV of 1892), ss 10, 111 (g)—Applicability of principles of the Act to lease executed prior to its enactment—In 1863, the leased certain land on permanent lease to Y, the in-

[1. L. R., 20 Mau., 101

34.—Payment of rent—Relief against forfeiture for non-payment of rent, though stipulation for payment contained in compromise decree—Civil Procedure Code (Act XIV of 1882), s 244—Decree containing general stipulation—Power of Court to relieve against penalty in execution pro-

much as the decree passed by the Court was a mere

35.—Reclamation—Landlord and tenant—Lease—Condition—Condition binding tenant to reclaim land—Meaning of the word "reclaim"—Construction—On the 10th June, 1895, certain marshy land adjoining the sea, comprising about 760 acres, was leased by Government to the plaintiff in perpetuity, subject to the condition (inter alia) that,

LANDLORD AND TENANT—continued.**12 FORFEITURE—continued****(a) BREACH OF CONDITIONS—concluded.**

alt water.
the lease
ought the
plaintiff
a declara-
tion that the Government had no right to cancel the lease, and for an injunction restraining it from taking possession of the land. He contended that

SHAMRAO PANDURANG v SECRETARY OF STATE FOR INDIA (1900) . . . L. L. R., 25 Bom., 32.

(b) DENIAL OF TITLE.

36.—Bengal Tenancy Act (VIII of 1885)—Bengal Act VIII of 1889—Sut for ejectment—Forfeiture—Denial by tenant of landlord's title—Denial in written statement.—In a district where

vided there has been an express denial of title prior

37.—Denial by tenant of landlord's title—Option on part of landlord to determine tenancy—Limitation Act (XV of 1877), Sch. II, Art. 133—Period of limitation as from determination of

title. That lease had been executed by the leading

LANDLORD AND TENANT—continued.

12. FORFEITURE—concluded.

(b) DENIAL OF TITLE—concluded.

the suit was barred by limitation, inasmuch as H was brought more than twelve years after the repudiation of the tenancy by defendants: Held that the suit was not barred by limitation. A tenant repudiating the title under which he entered becomes liable to immediate eviction, at the option of the landlord; but, until the landlord indicates that he intends to exercise his option, the tenancy subsists. This principle applies to tenancies from year to year. **SEINIVASA AYYAR v. MUTUSAMI PILLAI (1900)**

[L. L. R., 24 Mad., 246]

38.—*Bengal Tenancy Act (VIII of 1885)*.—*Denial of landlord's title*.—Where, in a suit for rent, defendant denied plaintiff's title, and the suit failed, and subsequently plaintiffs sued to eject the

[8 C. W. N., 575]

39.—*Estoppel—Denial of kadaiyat—Fleeting.*—The rule that a tenant is estopped from denying the title of his landlord applies only to the title of the landlord who lets the tenant in. If the tenant did not obtain possession from a person who was recognised as landlord, either by express agreement, or by attornment, or by formal acknowledgment by payment of rent, he may always show that his conduct was due to mistake or ignorance of facts.

tiffs, pleaded that it was forged, and denied payment of rent under it to the plaintiffs, and failed to establish his plea; *Held* that the tenant was not entitled to prove that the plaintiffs were not his landlords, although he had not been inducted into the land by the plaintiffs. *Protap Chandra Roy Chowdry v. Jyendra Chandra Ghosh* (1978), 4 C. L. R. 168, followed *Lai Mahomed v. Kallansu* (1958), 1 C. L. R. 11 Cal. 619, explained. *Ketu Das v. Sreendra Nath Sinha* (1903)

[7 C. W. N. 598

III ABANDONMENT, RELINQUISHMENT OR SURRENDER OF TENANCY.

40.—Act XII of 1881 (*N-W. P. Rent Act*), s 31.—Landholder and tenant—Relinquishment of part of holding.—Relinquishment not made in writing.—A relinquishment made by a tenant of his holding, when he does not hold under a lease, need not necessarily be in writing, nor need such relinquishment necessarily extend to the whole of the

LANDLORD AND TENANT—continued.

14. EJECTMENT.

(a) **GENERALLY.**

41.—*Ejectment, suit for—Onus—Dispossession by tenant—Presumption*—When a tenant has been in long and peaceable occupation of land as part of an admitted tenure, it lies upon the landlord, in a suit for ejectment, to prove in the first instance that the land is his *khas* property and not the tenant's. But where a tenant cut a tree standing upon a piece of land, and within a few months of that occurrence the landlord brought a suit for ejectment, and it was found that neither party had possession of the tree and its site: *held* that the fact of defendant's possession of a tenure of limited extent, within the plaintiff's *patti*, raises no presumption upon the defendant's seizure of a piece of land and claiming it as part of his tenure. *Rhideo Kristo Mesta v. N. K. & Co.*, 1898, 10 C. L. J. 1092, 10 C. L. J. 1092.

(b) NOTICE TO QUIT.

42.—Period.—Bengal Tenancy Act (VIII of 1835), s. 43, cl. (b).—Under-ryyat.—Ejectment.—Notice to quit.—Period of notice.—Transfer of Property Act (IV of 1882), s. 106.—It is not necessary that a notice under s. 49, cl. (b), of the Bengal Tenancy Act should mention any particular period within which the under-ryyat is to quit the land. *Naharullah Patwari v. Madan Gazi* (1896), 1 C. W. N. 133, followed. *Dwarkanath Santra v. Bani Dasji* (1902). 1 I. L. R. 28 Cal. 308

43.—Reasons.—Bengal Tenancy Act (VIII of 1853), s. 49.—Under-*rai*yati lease for an indefinite period.—Where an under-*rai*yat holds under a written lease for an indefinite time, the *rai*yat is not

U.S. DEPARTMENT OF AGRICULTURE

44.—*Service—Necessity of proving service of proper notice to quit—Land-revenue Code (Bombay Act V of 1879), s. 84—Issues to be raised by the Court—Practice—Procedure.*—The plaintiffs sued to eject the defendants from certain land, alleging that they were yearly tenants. The defendants *inter alia* pleaded that they were permanent tenants. The plaintiffs at the hearing did not prove service of notice to quit, as required by s. 84 of the Land-revenue Code (Bombay Act V of 1879), but contended that service of notice was admitted by the defendants in their written statement. *Held* that the defendants in their written statement, although not expressly denying the receipt of notice, disputed its legality, and thereby threw on the plaintiffs the burden of proving the service of proper notice. No such proof was given. Consequently, even assuming that the defendants were

LANDLORD AND TENANT—continued.**14 EJECTMENT—continued.****(b) NOTICE TO QUIT—continued.**

yearly tenants, the plaintiffs had not proved the termination of the tenancy or their right to recover possession. The fact that no issue is raised as to matters which the plaintiff is bound to prove does not justify the inference that the defendant intends to admit them. The duty of raising issues rests, under the Civil Procedure Code, with the Court. **GADGO V. SHAI DEY SINDHUSHWAR (1901)**

[I. L. R., 28 Bom., 380]

45.—Sufficiency—Bengal Tenancy Act (VIII of 1883), s. 49, cl. (b).—Under-rayat, holding out under a written lease—Notice to quit, requires of—Notice, at the instance of the landlord, signifying to the under-rayat that the landlord has called upon him to quit the land, whether sufficient—In a notice to an under-rayat to quit, s. 49, cl. (b), of the Bengal Tenancy Act does not prescribe any period within which the under-rayat must quit the land. All that it says is that the tenant shall not be required to quit the land before the end of the agricultural year next following the year in which the notice to quit is served by the landlord. Therefore, although

removed from the land. The notice need not be actually signed by the landlord himself. It is sufficient, if the notice is at the instance of the landlord calling upon the under-rayat to quit the land. **MOHENDRA NATH SARKAR v. BISWANATH HALDAR (1901)**.

[I. L. R., 29 Calc., 231
[S.C., 6 C. W. N., 183]

46.—Permanent tenancy—Origin of tenancy known—Claim of tenant to compensation

LANDLORD AND TENANT—concluded.**14 EJECTMENT—concluded.****(b) NOTICE TO QUIT—concluded.**

47.—Suit—Bengal Rent Act (X of 1859), s. 23,

[8 C. W. N., 199]

48.—Whether suit itself is sufficient notice—Annual tenancy—A rayat, whose tenancy can only be determined by a reasonable notice

entitling the plaintiff to eject the rayat at the end of a year, mentioned in the decree, subsequent to the

[I. L. R., 29 Calc., 203;
s.c., 6 C. W. N., 69]

15 BUILDINGS ON LAND; RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS

49.—Acquiescence—Compensation—In order to raise an estoppel against the landlord, it must be shown that the landlord had purposely allowed or encouraged the tenant to build, knowing that the

LANDLORDS.

See LAND-HOLDERS.

LANDMARKS.

See EVIDENCE—CIVIL CASES—MAPS.

[6 C. W. N., 629]

—Arbitrator—Public servant—Mischief—Penal Code (Act XLV of 1860), ss. 21, 434.—The parties to a proceeding under s. 145 of the Criminal Procedure Code, by mutual consent referred the dis-

[6 C. W. N., 134]

LANDMARKS—concluded.

pute as to the possession to the arbitration of A. and the Magistrate thereupon cancelled the proceedings under s. 145. The arbitrator, in order to define the boundary, erected certain pillars, which were destroyed by the accused, and they were in consequence convicted under s. 434 of the Penal Code. *Held* that the conviction was illegal, as A was not an arbitrator within the definition of s. 21, cl. (6), of the Penal Code, nor was he a public servant authorized to fix the pillars, within the meaning of s. 434 of that Code. **SUNDAR MAJHI v. EMPEROR (1903)**

[I. L. R., 30 Calc., 1084]

LAW REPORTS ACT (XVIII OF 1875).

—s. 3—Unreported judgments.—*Per* MACLEAN, C.J.—S. 3 of the Indian Law Reports Act (XVIII of 1875) does not prevent a High Court from looking at an unreported judgment of other Judges of the same Court. **MAHOMED ALI HOSSEIN v. NAZAR ALI (1901)**

[I. L. R., 28 Calc., 289; a.c., 5 C. W. N., 326]

LEASE.

See **BENGAL PRIVATE FISHERIES PROTECTION ACT** . . . 6 C. W. N., 118

See **GHATWALI TENURE** . . . 11 C. W. N., 84

See **HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION** . . . I. L. R., 28 Calc., 532
 . . . 30 Calc., 990

See **KABULIYAT.**

See **LANDLORD AND TENANT**

See **STAMP ACT (I OF 1879), s. 7.**
 [I. L. R., 28 Mad., 473]

See **STAMP ACT (II OF 1899), s. 5, AND SCH. I, ART. 35** . . . I. L. R., 25 Mad., 3

—agreement collateral to—

See **EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTORY WRITTEN INSTRUMENTS** . . . I. L. R., 29 I. A., 138

—agricultural—

See **REGISTRATION ACT, s. 17, CL. (d)**
 [I. L. R., 24 Mad., 421]

—breach of conditions in—

See **LANDLORD AND TENANT—FOREIGN—BREACH OF CONDITIONS.**

—cancellation of—

See **DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.**

[I. L. R., 29 I. A., 203]

—exchange of leasehold rights—

See **TRANSFER OF PROPERTY ACT, s. 118.**
 [6 C. W. N., 805]

LEASE—continued.

—unregistered, non-validity of—

See **COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.**

[7 C. W. N., 80]

CONSTRUCTION.

1.—“*Mokurari istemrari*,” meaning of—*Conduct and intention of parties—Local custom—Extrinsic evidence, admissibility of—Estoppel by misrepresentation—Recognition of succession to tenancy—Relevant fact—Evidence Act (I of 1872), s. 11, cl. 2*—The words “*mokurari istemrari*” in a lease do not primarily imply any heritable character in the grant, as the term *maurari* does. They imply permanency, from which, in a secondary sense, such heritable character might be inferred, it being always doubtful whether they mean permanent during the lifetime of the grantee or permanent as regards hereditary character. The words do not *per se* convey an estate of inheritance, but such an estate can be created without the addition of any other words, the circumstances under which the lease was granted and

Tulshi Pershad Singh v. Ramnarain Singh (1885), I. L. R., 12 Calc., 117; and Agin Dinah Upadhyay v. . . .

lease by reason of misrepresentation even on a point of law which is not clear and free from doubt. *Balkishen Das v. Leggo (1899), I. L. R., 22 All., 119*, referred to. When the question is

were received from the successors of the grantees in

not relevant, and cannot be taken as indicative of any such intention. *Croft v. Lumley (1854), 6 H. L. C. 672, 713, and Kali Krishna Tagore v. Fwile Ali Chowdhry (1853), I. L. R., 9 Calc., 813*, distinguished. *NARSING DIAL SINGH v. RAM NARSING SINGH (1903)* . . . I. L. R., 30 Calc., 683

2.—Redemption.—*G* created a *maurari* lease in favour of *J*, and stipulated that *J* was to defray costs of litigation for redeeming the property under

LEASE—continued.**CONSTRUCTION—continued**

lease, and that, if he succeeded in redeeming it, he was to obtain possession of it and was to pay rent to G from the date of such possession. *Held* that such a document could not transfer the property leased, but was only a contract to be performed in future and upon the happening of a contingency. *Rajah Sahib Perliad Sein v Doorga Persaud Tewarree* (1869), 12 M. I. A., 256, and

3.—Renewal—Mortgage of a joint-lease,

[6 C. W. N., 372]

4. —Offer by lessor to renew lease without stating terms, effect of—Arbitration—Award—Valuation—Civil Procedure Code (Act XIV of 1852), s. 525.—In an agreement to lease there was a proviso to the following effect:—"At the expiration of the period of the lease, in the event of a new lease not being given, the said lessor shall be at liberty to resume direct possession of the land

arbitration, the valuation made by three persons appointed by the plaintiff was not an award within

[I. L. R., 30 Cal., 831]

5.—Resumption—Dead, construction of—Patta of ancestral estate executed by members of Mitakshara family to give maintenance to female relative and her descendants—Power to resume on failure or breach of conditions—Estate, nature of, granted—Decendant not in existence at time of grant.—In 1858 a Hindu, whose family was

LEASE—continued.**CONSTRUCTION—continued**

of the grant on the ground that his father could not lawfully make it without his consent. That one was compromised by the execution, in 1858, of a patta by the plaintiff and his father of the mouzas in favour of J in the following terms: "J shall get an allowance of Rs/100 for services during her lifetime, and her descendants who may, under the Hindu law, become his heirs shall get one-half thereof in perpetuity, and in case of the male who ever profits the mouzas which are held by the said J under the deed ought to be not less than Rs/100 yield annually over and above Rs/100, he is bound as the fannas of those mouzas, the said mouzas shall be left in the possession of the said J, and in the death of the said J one-half of the said mouzas shall permanently remain in the possession of her descendants, who may be alive at that time, and he (her) heirs according to the shroffas as a fannas equal to one-half of the said fannas. The female

womb or their children, the female and their representatives should have power to resume, and to take possession of the remaining one-half, and the properties mentioned in the patta should pay to the Raj. On the same date J executed, in favour of her father and brother, a khatuliyat, in which the compromise was stated in substantially the same terms. J had one son born some years after the execution of the patta. In 1885 J gave a patta gago and leaso of one of the mouzas to the defendant. In a suit brought in 1893, after the death of J, for a declaration that the plaintiff was not bound by the mortgage and leaso and for possession of the mouza: *Held* by the Judicial Committee (reversing the decision of the High Court) that J's son having been in existence at the time of the execution of the Raj estate, and the plaintiff was entitled to the same it. The restriction on J's power of alienation showed that the intention was not to give her, as was contended for the defendant, an estate of her inheritance in one-half of the mouzas, as that restriction would have been repugnant to such a gift. *Bhobben Mokini Debia v Harriah Chander Chaudhary* (1878), L. R. 5 I. A., 139, distinguished. The High Court held that J's son had, under the circumstances of the case, an equity to compel the

LEASE—concluded.**CONSTRUCTION—concluded.****LEAVE OF COURT.**

See COMPROMISE—COMPROMISE OF SUITS
UNDER CIVIL PROCEDURE CODE
[7 C. W. N., 90]

LEAVE TO APPEAL.

See APPEAL TO PRIVY COUNCIL—
CASES IN WHICH APPEAL LIES OR
NOT—

SUBSTANTIAL QUESTIONS OF
LAW;

[I. L. R., 25 Mad., 215]

CONCURRENT JUDGMENTS ON
FACTS

[5 C. W. N., 455]

PRACTICE AND PROCEDURE—LEAVE
TO APPEAL.

See PRIVY COUNCIL, PRACTICE OF—
SPECIAL LEAVE TO APPEAL.

—in forma pauperis—

See LIMITATION ACT, 1877, s. 5
[I. L. R., 30 Cal., 790]

LEAVE TO DEFEND SUIT.**—extension of time to apply for—**

See NEGOTIABLE INSTRUMENTS, SUM-
MARY PROCEDURE ON.
[5 C. W. N., 259]

LEAVE TO SUE.

See ACT—1863—XX, s. 18
[I. L. R., 24 Mad., 685;
26 Mad., 166]

See JOINDER OF CAUSES OF ACTION.
[7 C. W. N., 353]

See LETTERS PATENT, HIGH COURTS,
1865, CL. 12 . I. L. R., 24 Mad., 293

See PARTIES—SUITS BY SOME OF A CLASS
AS REPRESENTATIVES OF CLASS.
[I. L. R., 25 Mad., 399]

See RECEIVER . . . 6 C. W. N., 629

See RIGHT OF SUIT—FRAUD.
[7 C. W. N., 353]

LEGACY.

See WILL—CONSTRUCTION.

—lapse of—

See SUCCESSION ACT, s. 90.
[I. L. R., 24 Mad., 299]

LEGACY—concluded.**—suit for—**

See LIMITATION ACT, 1877, SCH. II, ART.
123 . . . I. L. R., 25 Mad., 361

See PARTIES—PARTIES TO SUITS—
LEGACY, SUIT FOR.

LEGAL NECESSITY.

See HINDU LAW—ALIENATION—ALIENA-
TION BY WIDOW—

ALIENATION FOR LEGAL NECESSITY;
WHAT CONSTITUTES LEGAL NECES-
SITY.

**LEGAL PRACTITIONERS' ACT (XVIII
OF 1879).**

See PLEADER.

—ss. 6 and 8—

—Act XIV of 1874 (Scheduled Districts
Act), ss. 3, 5 and 6—Kumaun Rules, 27th July,
1894, rules 2 and 11—Jurisdiction of the
High Court as regards enrolment of vakils in the
province of Kumaun and Garhwal.—For the pur-
poses of the Legal Practitioners' Act, 1879, the Com-
missioner of Kumaun is the High Court for the
Province of Kumaun and Garhwal. A vakil, there-
fore, whose name is enrolled in the High Court of
Judicature for the North-Western Provinces is not,
by virtue of such enrolment, entitled to practise in
the Courts of Kumaun and Garhwal, nor has the

MATTER OF THE PETITION OF PADMA DAT JOSHI
(r.s., 1902) . . . I. L. R., 24 All., 348

—ss. 13, 13 (f), 14, 36—

See MOOKTEAR . I. L. R., 29 Cal., 860

—s. 13—

See PLEADER—REMOVAL, SUSPENSION
AND DISMISSAL.
[I. L. R., 26 Mad., 443]

—ss. 13 and 14—

See MOOKTEAR . . . 7 C. W. N., 281

1.—Professional misconduct—Legal Prac-
titioners' Act (XVIII of 1879), as amended by Act
XI of 1896, ss. 13, 14—Grossly improper conduct
—Legal practitioner advising payment of money to
witness to speak the truth or to prevent giving
false evidence—False statements by legal practi-
tioner in letter to induce speedy remittance for each
purpose—A legal practitioner, by paying or offering

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—continued.

— ss. 13 and 14—continued.

SEN (1890)

C. W. N., 45

2. — Legal Practitioners' Act (XVIII of 1879, as amended by Act XI of 1896), ss. 13, cl. (f), 14—Pleader, when he does something as a litigant or member of the public and not as pleader, is to be regarded as guilty of professional misconduct—"Any other reasonable cause," construction of—An allegation, made by a pleader as a defendant in a suit and not as a pleader, that the plaintiffs had bribed some officer of the record-room to tamper with certain documents produced at the instance of the plaintiff, did not amount to professional misconduct. In the words "any other reasonable cause," in s. 13, cl. (f), of the Legal Practitioners' Act, the expression "other" means "other" *ejusdem generis*, that is, of the class or description of misconduct which is referred to in the preceding clauses, that is to say, professional misconduct. The Legal Practitioners' Act is aimed

3.—Disrespectful language—Petition, containing disrespectful language, presented by co-plaintiff who was also a pleader in the Court—Act committed by a suitor.—Two persons filed a

against the pleader under the Legal Practitioners Act, 1879. The pleader, while disclaiming any intention to be disrespectful, contended that no offence had been committed under the Legal Practi-

LEGAL PRACTITIONERS' ACT (XVIII OF 1879)—concluded.

— ss. 13 and 14—concluded.

L. R., 1 P. C., 283, referred to. IN THE MATTER OF A FIRST-GRADE PLEADER (1900)

[I. L. R., 24 Mad., 17]

— ss. 13, 14 and 40—

See PLEADER—REMOVAL, SUSPENSION AND DISMISSAL.

[I. L. R., 24 Mad., 83]

— s. 14—

See ante, ss. 12, 13 (f), 14, 36.

See ante, ss. 13 AND 14.

See ante, ss. 13, 14 AND 40.

— s. 27; rules made under—

See PLEADER—REMUNERATION.

[7 C. W. N., 300]

— s. 28—

See PLEADER—REMUNERATION.

[7 C. W. N., 300]

— s. 36—

See ante, ss. 12, 13 (f), 14, 36.

— s. 36 (as amended by Act XI of 1896)—

1.—Tout—Inquiry and evidence of general repulse must be before the officer empowered to make the list—Delegation of authority.—The officer empowered to make a list of tous under s. 36 of the

2.—Application to have persons declared as tous—Hearing on affidavits—Validity—Operation of order limited to Sessions District.—Where application is made to a Court to declare persons to be tous, under s. 36 of the Legal

— s. 40—

See ante, ss. 13, 14 AND 40.

LEGAL TENDER.

— certain coin not—

See STOLEN PROPERTY—DISPOSAL OF, BY THE COURT. I. L. R., 25 Bom., 702

LIBEL—concluded.

NARASIMHA SHANKAR DESHPANDE v. HALWANT
LAKSHMAN (1903) . . . I. L. R., 27 Bom., 585

LICENSE.***—breach of conditions of—***

See BENGAL EXCISE ACT (VII OF 1878),
s. 59 . . . I. L. R., 29 Calc., 806

—discretion to refuse—

See HACKNEY-CARRIAGE ACT (DOM. ACT
VI OF 1863), s. 6
[I. L. R., 27 Bom., 307]

—obligation to grant—

See POLICE ACT (XLVIII OF 1860),
ss. 11, 12 . . . I. L. R., 26 Bom., 398

—to keep animals—

See BENGAL MUNICIPAL ACT (III OF 1884),
ss. 203, 273 . . . 5 C. W. N., 331

LIEN.***—for unpaid purchase-money—***

See CONTRACT—BREACH OF CONTRACT.
[7 C. W. N., 562]

See VENDOR AND PURCHASER—VENDOR.
RIGHTS AND LIABILITIES OF.
[6 C. W. N., 150]

—maritime—

See ADMIRALTY OR VICE-ADMIRALTY
JURISDICTION. I. L. R., 29 Calc., 403

—of attorney, for costs—

See ATTORNEY AND CLIENT.
[I. L. R., 29 Calc., 63]

—of mortgagee—

See SALE FOR ARREARS OF REVENUE—
DEPOSIT TO STAY SALE.
[I. L. R., 30 Calc., 704]

*—of banian—Damages—*On termination of a
banianhip agreement, a banian's lien is indivisible,

LIEN—concluded.

and extends over every portion of the goods come
into his possession as security for advances made by

LIFE ESTATE

See CONTRACT—CONSTRUCTION OF COY-
TRACTS . . . I. L. R., 28 I. A., 188

See HINDU LAW—WILL—CONSTRUCTION
OF WILLS—ESTATES ABSOLUTE OR
LIMITED.

See LEASE—CONSTRUCTION.
[I. L. R., 29 Calc., 720]

*—Life interest—Perpetual gift—“Always and
for ever,” meaning of.*—The words “always and for
ever,” in a Will, award, order of Court or other
document, do not *per se* extend the interest given
beyond the life of the person who is named. They
are not inconsistent with limiting the interest given;
but the circumstances under which the instrument is
made, or the subsequent conduct of the parties, may
show the intention with sufficient certainty to enable
the Courts to presume that the grant was perpetual.
Moulei Muhammad Abdul Moyid v. Musumai
Mustafa . . . 10 C. W. N., 331

[10 C. W. N., 331; 5 C. W. N., 331; 23 All., 504;
I. L. R., 28 I. A., 65]

LIGHT AND AIR.

See PRESCRIPTION—EASEMENTS—LIGHT
AND AIR.

—enforcement of injunction—

See EXECUTION OF DECREE—EXECUTION
BY AND AGAINST REPRESENTATIVES.
[I. L. R., 26 Bom., 283]

LIMITATION.

	Col.
1. LAW OF LIMITATION . . .	593
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3. STATUTES OF LIMITATION—	
MADRAS ACT I OF 1870, s. 7 . . .	600

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TIME AGAINST PRELIMINARY ORDER OR
DECREE . . . I. L. R., 29 Calc., 758

LIMITATION—continued.

See BENGAL MUNICIPAL ACT (BEN. ACT III OF 1894), ss. 270, 271, 353

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See BENGAL TENANCY ACT—

s. 13; . . . 6 C. W. N., 180

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See CALCUTTA MUNICIPAL CONSOLIDATION ACT (BEN. ACT II OF 1888), ss. 247, 250, 427 . . . I. L. R., 30 Calc., 317

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See CIVIL PROCEDURE CODE, s. 560

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See DOCUMENT—ALTERATION OF.

[I. L. R., 25 Bom., 616

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See LANDLORD AND TENANT—NATURE OF TENANCY . . . I. L. R., 26 Mad., 486

See LIMITATION ACT, 1-77.

See MADRAS CITY MUNICIPAL ACT, 1894, ss. 892, 433 AND 458

[I. L. R., 25 Mad., 118

See MADRAS RENT RECOVERY ACT—

s. 69; . . . I. L. R., 24 Mad., 556

s. 78 . . . I. L. R., 24 Mad., 339

See MORTGAGE—REDEMPTION—RIGHT TO REDEMPT . . . I. L. R., 24 Mad., 449

See REGISTRATION ACT (III OF 1877), s. 28

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See SALE FOR ARREARS OF RENT—INCUMBRANCES . . . I. L. R., 26 Calc., 180

— question of—

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— under Act XII of 1881, s. 148—

See PARTIES—PARTIES TO SUITS—RENT, SUITS FOR, AND INTERESTORS IN SUCH SUITS . . . I. L. R., 25 All., 83

— under Land Acquisition Act, 1894, s. 18 (2)—

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[7 C. W. N., 538

LIMITATION—continued.

— under Madras Act VIII of 1865, s. 78—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—WRONGFUL DETRAINT

[I. L. R., 25 Mad., 540

1. LAW OF LIMITATION.

1.—Exemption—*Quere* whether, having regard to the terms of s. 50 of the Code of Civil Procedure, a plaintiff can be allowed to take advantage of any ground of exemption from the ordinary law of limitation which has not been pleaded in the plaint *BENODE BEHARI MOOKERJEE v. RAJ NARAIN MITTER* (1903)

[I. L. R., 30 Calc., 889; s.c., 7 C. W. N., 851

2.—Time—*Civil Procedure Code*, s. 54—When a Court fixes a time under cl. (a) or (b) of s. 54 of the Code of Civil Procedure, it must be a time within limitation; and s. 54 does not give a Court any power to extend the ordinarily prescribed period of limitation for suits. *Jaini Prasad v. . . .*

2. QUESTION OF LIMITATION.

3.—Adverse Possession—*Hindu Law—Widow—Mitakshara Law—Possession of widows in undivided Hindu family—Suit by reversionary heirs to set aside assignment by widow, and for possession—Evidence of arrangement between . . .*

result of an arrangement with them. As evidence of . . .

barred by limitation. *SHAM KOR v. DAU KOR* (1902)

[I. L. R., 28 Calc., 884; s.c., 6 C. W. N., 657; I. R., 29 I. A., 132

4.—Alternative plea—*Alternative plea of limitation and tenancy*—It is open to a party to plead tenancy and limitation in the alternative. *Jowardon Mundel v. Sundhu Nath Mundel* (1859), I. L. R., 12 Calc., 806, explained. *Dinomow Debis v. Doorga Prasad Moysomdar* (1873), 11 W. R., 70, relied upon. Where plaintiff and defendant

LIMITATION—continued.**2. QUESTION OF LIMITATION—concluded.**

both claimed under the same landlord, and defendant further took a plea that plaintiff's suit was barred by limitation, the lower Appellate Court found plaintiff's title proved and that defendant's alleged tenancy was not proved, and refused to go into the question of limitation raised by the defendant. *Held* that the question of limitation must be decided. **KEANUDDI v. HARA MOHAN MONDUL** (1903)

[7 C. W. N., 294]

5.—Execution of decree—Instalment decree—Fraud on the part of decree-holder—Objection by minor on attaining majority—Where a decree is for

was practised, and execution taken against a minor

6.—Issue—Practice.—Where an issue of limitation is not raised, either by the pleadings or the evidence, it is not obligatory on the Judge to direct it, though he may have a discretion so to do. **BOMMADEVARA VENKATA NARASIMHA NAIDU v. BOMMADEVARA BHASHTAKARU NAIDU** (1902)

[L. R., 29 I. A., 76;

s.c. I. L. R., 25 Mad., 367; 6 C. W. N., 641]

7.—Minority—Suit by guardian.—A suit was brought upon a mortgage bond. The original mortgagee was a guardian acting for a minor, and the suit was also brought by him in the same capacity. The lower Appellate Court held that the suit was

pendra Narain Roy (1895), 1 L. R., 23 Cal., 374, relied upon **SHAMA CHURN HUI v. KANANGAI CHAITAN PRASAD** (1903). 7 C. W. N., 594

8.—Report as to date of death—Report of

dates being found not to correspond. *Held*, on a question of limitation, that the substantive statement was that given in the vernacular, and that the rest was a miscalculation. **JAGATPAL SINGH v. JAGSHAB BAKSHI SINGH** (1902)

[I. L. R., 25 All., 143; s.c., L. R., 30 I. A., 27; 7 C. W. N., 209.]

LIMITATION—concluded.**3. STATUTES OF LIMITATION.**

MADRAS ACT I OF 1876, s. 7.

9.—Assessment of Land-revenue Act (Madras Act I of 1876), s. 7—Appeal to Board of Revenue from assessment fixed by Collector—Revenue Recovery Act (Madras Act II of 1864), s. 45—Madras Regulation II of 1903, s. 19—Effect of Madras Act I of 1876 on the procedure prescribed by s. 18 of Regulation II of 1903.—The period of

after the appointment proposed by him to the Board of Revenue has been sanctioned. It does not commence to run, under the Act of 1876, from the date when the Collector himself fixes the amount and submits his proposal to the Board of Revenue for sanction. The Act of 1876, s. 7, is not affected by the

FISCHER (1902) . . . I. L. R., 28 Mad., 389

LIMITATION ACT, 1877.

1.—Applications.—Under the Limitation Act, 1877, an application cannot be made merely for the purpose of signifying the decree-holder's intention to keep the decree in force. **RUNGIAH GOUDEN AND CO v. NANNAPPA ROW** (1903)

[I. L. R., 28 Mad., 780]

2.—Cause of action.—The Limitation Act is intended, not to define or create causes of action, but only to prescribe the period within which existing rights may be enforced. **SURJANONI DAS v. KALI KANTA DAS** (1900)

[I. L. R., 28 Cal., 37; s.c., 5 C. W. N., 195]

4.—Title under—Limitation—Adverse possession—Landlord and tenant—Alluvial land, suit for—Land disavowed and afterwards reformed—Effect of acquiescence in title of Government—Discontinuance of possession by submer-

LIMITATION ACT, 1877—continued.

sion of land by river—The possession of the tenant is the possession of the landlord, and it can make no difference whether or not the tenant be one who might claim adversely to his landlord. In a suit for alluvial land, at one time part of the plaintiff's permanently-settled estate, but subsequently, in 1854, after deluvion and reformation, adjudged to be an accretion to Government land, where the plaintiffs had taken from the Government *yaras* of such land

have held part of the land continuously for more than 12 years, the suits to that was barred by limitation. The facts that the land had been permanently settled with the plaintiffs by the Government, and that the plaintiffs had always paid to the Government the full amount of revenue assessed upon it, could make no difference. The plaintiffs had acquiesced in the decision of 1854, by which the land was adjudged to the Government, and no ground had been shown for relieving them from the consequences of their acquiescence. Another portion of the land, whilst in possession of the Government by the plaintiffs as their *yaradars*, became submerged, and remained so until within ten years of the institution of the suit, and the Government contended that their possession of the land continued during submersion. *Held* that, for the purpose of trying the question of limitation, the Government must be regarded as trespassers and dispossessioners of the rightful owners, and it would be contrary to principle and authority to imply the constructive possession of the Government through the plaintiffs as their tenants, whilst the lands were submerged, so as to enable the Government, as wrongdoers, to obtain a title by adverse possession. In order to sustain such a title under the Limitation Act, there must be actual possession of a person claiming as of right by himself or by persons deriving title from him. *Held*, also, that the Government were dispossessed by the *cis major* of the submersion, which had the same effect as a voluntary abandonment of the land. *Trustees, Executors and Agency Company v. Short* (1893), *L. R.*, 13 A. C. 793. The and, after submersion, became derelict; and, so long as it remained submerged, no title could be made against the true owner. *Kally Churn Sahoo v. Secretary of State for India* (1881), *L. R.*, 6 Cal., 725, overruled. *SECRETARY OF STATE FOR INDIA v. KRISHNAMONI DUTTA* (1902)

[*L. R.*, 29 Cal., 518;

a.c., 6 C. W. N., 617; *L. R.*, 29 I. A., 104.

—*a. 3 and Sch. II, Art. 118—*

—“*Plaintiff*”—*Suit to set aside an adoption—Effect of bar on immediate reversioner—S died.*

purance of authority alleged to have been given by her late husband. From that date *A* claimed,

LIMITATION ACT, 1877—continued.

—*a. 3 and Sch. II, Art. 118—concluded*

as adopted son, to be entitled to the estate of *S*; and both the daughters of *S* were aware of that claim, from 1886. In 1893 a son was born to one of the daughters, and, within six years of his birth, namely in 1898, the present suit was instituted on his behalf to set aside *A*'s adoption. *A* in defence

—*a. 4—*

See BENGAL TENANCY ACT, s. 184 AND SCH III. I. L. R., 28 Cal., 86

2.—Pauper suit—Civil Procedure Code (Act XIV of 1892), ss. 410, 413—Act VIII of 1859, ss. 303, 310—Suit by pauper—Application for permission to sue in forma pauperis—Limitation—Explanation—Date of institution of suit—Payment of Court-fee—An application for leave to sue as

limitation, to be a plaint presented on the date on which it was filed. *Skinner v. Orde* (1879), *J. L. R.*, 2 All., 241, followed. *Abbasi Begum v. Naahi Begum* (1896), *I. L. R.*, 18 All., 206, disented from. *JANAKDHARY SIKUL v. JANAK KORS* (1900)

[*I. L. R.*, 28 Cal., 427

—*a. 5—*

See post, ss 12 AND 5.

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—MISCELLANEOUS CASES. I. L. R., 30 I. A., 20

See DECREE—ALTERATION OR AMENDMENT OF DECREE. I. L. R., 24 Mad., 646

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[*I. L. R.*, 25 All., 71

LIMITATION ACT, 1877—continued.

—s. 5—concluded.

—ss. 5 and 19—

—Acknowledgment given beyond time, but in vacation while right of suit still exists, as provided by s. 5 of Limitation Act—The plaintiff brought this suit in 1900 to recover money due under a

—s. 5 and Sch. II, Art 173—

—Civil Procedure Code (Act XIV of 1882), ss. 623, 629—Review—Second application for

Act (XV of 1877), and that the time during which the previous application was under disposal could not be deducted. *VAMAN SAKHARAM JOSHI v. MALHARI BIN MAHABU* (1902). I. L. R., 29 Bom., 485

—s. 6—

See REGISTRATION ACT (III of 1877), s. 77.
[I. L. R., 30 Calc., 533]

—s. 7—

See post, s. 8. O. C. W. N., 348

1.—Limitation Act (XV of 1877), ss. 7, 13 and 29, and Sch. II, Arts 112, 113—Joint family—Separate estate—Possession, discontinuance of—Properly, extinguishment of right to Under s. 7 of the Limitation Act, a person under disability cannot bring his suit after 3 years after the disability

LIMITATION ACT, 1877—continued.

—s. 7—concluded.

ceases Under s. 28 of the Limitation Act, the right of a person to property is extinguished at the determination of the period limited for bringing a suit for possession of it *VARUDEVA PADHI KHADANGA GARU v. MAGUMI DEVAN BAKSHI MAHA-PATRU LU GARU* (1901)

[5 C. W. N., 545;
s.c., I. L. R., 24 Mad., 387; L. R., 23 I. A., 81]

2.—Minor—Decree-holder—Civil Procedure Code (Act XIV of 1882), s. 231—When one only of several joint decree-holders is a minor s. 7 of the

3.—Where limitation is determined by the provisions of the Bengal Tenancy Act, whether a minor and Act the of sec

the limitation is determined by the provisions of s. 167 of the Bengal Tenancy Act, s. 7 of the Limitation Act cannot have any application, and the minor is not entitled to any fresh period of limitation. *Guriya Nath Roy Bahadur v. Patani Bibee* (1902). I. L. R., 17 Calc., 263, referred to *ANNOY KUMAR BOOR v. BEJOY CHAND MONHATAP* (1902)

[I. L. R., 29 Calc., 818]

—s. 7, and Sch. II, Art. 11—

—Minor—Representatives—Assignees from minor—Civil Procedure Code (Act XIV of 1882), s. 335

—Order—Sut to set aside order—Limitation.—In execution of a decree, one Rudraji purchased the lands in dispute in September, 1837. Rudraji then died, and the lands were delivered, through the Court, into the possession of Rudraji's heirs, in December, 1838. The defendant applied to the Court, under s. 335 of the Civil Procedure Code (Act XIV of 1882), with the result that on the 23rd February, 1839, the Court ordered that the lands should be given to him. On the 21st April, 1842, Rudraji's heirs, who were still minors at the date of this suit, assigned their rights to the plaintiff. On the 21st January, 1899, plaintiff filed this suit to recover possession of the property. Held that the

LIMITATION ACT, 1877—continued.

—s. 7, and Sch. II, Art. II—
concluded.

to his representatives after his death, but not to an assignee from the minor. *Rudrakant v. Nobo Kishore* (1893), 1 L. R., 9 Calc. 663, and *Harak Chand v. Deonath Sahay* (1907), 1 L. R., 25 Calc., 409, followed. **MAHADEV RAM MESTA SUTAR v. BABI CHIMNAJI SUTAR** (1932)

[1 L. R., 28 Bom., 730

—ss. 7 and 8, and Sch. II, Art. 106—

—*Suit by joint claimants, one being a minor—Bar of limitation saved as against all.*—In 1835, five persons commenced to carry on business in partnership. In 1890 P (one of them) died. No accounts were taken, nor were the heirs of P introduced as partners into the partnership. The four surviving partners continued to carry on the business. In 1891, C (one of them) died. No accounts were taken, nor were the heirs of C introduced as partners into the partnership. The three surviving partners continued to carry on the business. In 1893, the legal representatives of C instituted this suit, against the surviving partners and the representatives of the deceased partners, for an account, and for a share of the profits of the partnership in which C was bound in 1890. On the date of the suit, C was dead. On the date of the suit, the suit was barred by limitation: Held that the starting point for computing the period of limitation was the date of C's death. The present suit could not be regarded (within the meaning of Art 106 of Sch. II to the Limitation Act) as a suit in part for an account and a share of the profits of the original partnership. When a partnership is determined by death, and the surviving partners continue to carry on the business, the Limitation Act is no bar to taking the accounts of the new partnership by

in 1891 and the suit would be barred, *prima facie* by Art 106 of Sch. II to the Limitation Act, the bar was saved by ss 7 and 8 of that Act, inasmuch as the third plaintiff was and still continued a minor. The effect of s 8 was to save the bar in the case of joint claimants. The effect of s 7 was to save the bar in the case of joint claimants could give partners or representative plaintiff.

of the Limitation Act considered. *Barber Maran v. Ramana Goundan*, 1 L. R., 20 Mad., 361, discussed. The decision in that case held inapplicable to a case of co-heirs *Sethan v. Rajagopala*, 1 L. R., 13 Mad., 236, and *Kandhiya Lal v. Chandar*, 1 L. R., 7 All., 313, approved as to the construction of s 7 of the Limitation Act. **AKHISA BIRI v. ABDUL HADER KHAN** (1901)

[1 L. R., 25 Mad., 26

LIMITATION ACT, 1877—continued.

—ss. 7 and 8, and Sch. II, Art. 179—

—*Application for execution of decrees—Joint decree in favour of three persons—Previous application, more than three years before, while one decree-holder was a minor—Attainment of majority by that decree-holder within three years of present application—Limitation—“Joint execution-creditors”—“Joint creditors”—“Person entitled”—Civil Procedure Code (Act XIV of 1902), s. 231—On 30th June, 1892, a joint decree was passed in favour of three brothers, who, at the date of the decree, were all minors. On 8th January, 1893, the last application for execution, previous to the present one, was made. At this date two of the brothers had attained majority and one was a minor. On 25th February, 1893, the present application for execution was presented, the youngest brother having attained majority less than three years before the application. The application of 8th January, 1892, was decided or assumed to have been made in accordance with law. Held that the decree was not capable of execution, either as a joint decree, or to the extent of the interest of the youngest decree-holder. S 7 of the Limitation Act, 1877, only applies where all the joint execution-creditors were under disability at the time when the period of limitation began to run. Joint execution-creditors are not “joint creditors,” within the meaning of s. 8 of the Limitation Act, 1877. The words “a person entitled to institute a suit or make an application,” in s 7 of the Limitation Act, refer to one who, in his own right, is so entitled, and not to a person who, by a rule of procedure, such as that contained in s. 231 of the Code of Civil Procedure, is authorised, with the permission of the Court, to make an application for execution for the benefit of himself and others interested jointly with him in the decree to be executed. *Surya Kumar Dutt v. Arun Chunder Roy*, 1 L. R., 23 Calc., 485, dissented from. *Sethan v. Rajagopala*, 1 L. R., 13 Mad., 236, and *Vigneswara v. Bapayya*, 1 L. R., 16 Mad., 436, approved. **PERIASAMI v. KRISHNA AYYAN** (S.B., 1932) 1 L. R., 25 Mad., 431*

—s. 8—

See ante, ss. 7 AND 8 AND SCH. II, ART. 106.

See ante, ss. 7 AND 8 AND SCH. II, ART. 179.

1.—*Limitation Act (XV of 1877), ss 7, 8—Decree obtained by an adult jointly with minors—Where a rent decree was obtained by an adult plaintiff and three minors who were described in the plaint as suing through the adult plaintiff as their guardian—Held that, the adult plaintiff being entitled to obtain the decretal amount and give a valid discharge, the matter came directly under s. 8 of the Limitation Act, and that the plaintiffs were not protected by the provisions of s. 7. **BROLAND JHA v. PADMANABH SINGH** (1901) 8 C. W. N., 348*

2.—*Suit for contribution by debtor who has paid money due under a bond against heir of co-obligor of bond—Limitation—Minority—Nature of the*

LIMITATION ACT, 1877—continued.**—s. 8—concluded.**

rights of co-obligees discussed—In the case of co-obligees of a money bond, in the absence of anything

—s. 10—

See TRUST . I. L. R., 30 Calc., 369

Suit by beneficiary against executors—A suit brought by a beneficiary against the executors of a will, for the purpose of following property vested in them in trust for a specific purpose, and of making them account for it and hand over to such beneficiary, as the result of that account, what may be found due to him, comes within the provisions of s. 10, Limitation Act, and cannot be barred by lapse of time. *Hurro Coomares v Taras Churn* (1882), *I. L. R., 8 Calc., 766*, followed *Saroda Pershad v. Braja Nath* (1890), *I. L. R., 5 Calc., 910*, distinguished. *Nunda Lal Bose v. Nistaram Dass* (1901) . *7 C. W. N., 353*

—ss. 12 and 5—

1.—Appeal—Subsisting right of appeal—Application for copies—Exclusion of time in computing the period of limitation—So long as the right of appeal is subsisting, an appellant is entitled, under s. 12 of the Limitation Act (XV of 1877), to apply for a copy of the lower Court's decree. The time requisite for obtaining such copy should be excluded in computing the period of limitation prescribed for the appeal. *Siyadat-un-Nissa v. Muhammed* (1897), *I. L. R., 19 All., 342*, and *Sitaram v. Ramji* (1900), *P. J., p. 53*, followed *TUKARAM GOPAL v. PANDURANG SADARAM* (1901) [*I. L. R., 25 Bom., 584*]

2.—Appeal—Exclusion of time for obtaining

an appeal expires on a day when the Court is closed, the appeal may be presented on the day the Court

3.—Computation of time—Deduction of time for preferring an appeal—Time required to obtain a copy of the decree—The appellant, with a view to

LIMITATION ACT, 1877—continued.**—ss. 12 and 5—concluded.**

prefer an appeal in the lower Appellate Court, applied for obtaining a copy of the decree on the 15th October; information was supplied to him on the 18th November as to the number of folios required for copying the decree, and on the same day the appellant put in the folios, and the copy was ready for delivery on the 21st November. *Held* that, in preferring an appeal, the appellant was entitled to the deduction of the whole period from the 15th October to the 21st November. *KATI SANKAR BAPPAI v. BAIKANTA NATH SEN* (1902) . *7 C. W. N., 109*

—s. 14—

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION.

[*5 C. W. N., 150*]

See REGISTRATION ACT (III of 1877), s. 77 . I. L. R., 30 Calc., 532

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES [*I. L. R., 29 Calc., 628*]

1.—Proceedings to enforce a decree, taken bond fide before a Court which the party bond fide within *Hira*, 792,

[*10 C. W. N., 150*]
s.c., I. L. R., 28 Calc., 938

2.—Act XII of 1891 (North-Western Provinces Rent Act), s. 148—Suit by intertenant to establish his title in a Civil Court—Limitation—*D* sued *C* for rent of agricultural land, alleging *C* to be his occupancy tenant. *C* pleaded that he was not the tenant of *D*, but was the tenant of *B* and others. *B* and others were accordingly added as defendants to the suit. The suit was

barred by limitation. Whatever might have been the case with *C, B* and others, though perhaps acting in good faith, did not prosecute the former proceedings in the Court of Revenue with due diligence

3.—Deduction of period during which plaintiff had been prosecuting another proceeding—Former proceeding dismissed for misjoinder of causes of action—Written statement of defendant treated as an acknowledgment—Plaintiff had previously filed

LIMITATION ACT, 1877—continued.

—s. 22—concluded.

instead of as one of the heirs. Held that there was no addition of a new defendant, within the meaning of s. 22, Limitation Act. *PROSUNNO KUMAR SEN v. MANABHARAT SANA* (1903)

[7 C. W. N., 575]

—s. 23—

See post, SCH. II, ART. 35.

[I. L. R., 25 Bom., 644]

—ss. 23 and 28, and Sch. II, Arts. 120, 142 and 144—

—Attachment by Magistrate under s. 146, Criminal Procedure Code—Cross-suits for declaration of right to possession—Continuing wrong—Limitation—Certain lands were attached by a Magistrate, in 1886, under s. 146 of the Code of Criminal Procedure, in consequence of disputes relating to their possession. The Magistrate con-

being raised: *State of Mysore v. The Bank of India* for declaration of title to immovable property and the profits therefrom, they were governed by Art. 120 of Sch. II to the Limitation Act. Articles 142 and 144 were not applicable, the suits not being for the recovery of immovable property, within the

regarded as having discontinued possession. The attachment by the Magistrate operated, in law, for purposes of limitation, simply as a detention or custody, pending the decision by a Civil Court, on behalf of the party entitled. For the purposes of

and possession, and the procuring by such denial the attachment by the Magistrate. There was no continuing wrong, within the meaning of s. 23 of the Limitation Act, so as to give a fresh starting point for limitation at every moment of the time during which the attachment continued. *Chakrabarti Lal Roy v. Lolit Mohan Roy*, I. L. R., 30 Cal.,

LIMITATION ACT, 1877—continued.

—ss. 23 and 28, and Sch. II, Arts. 120, 142 and 144—concluded.

Though the suits were for declaration of title only the suits did not extinguish the right and title of the true owner to the property. The operation of s. 23 of the Limitation Act is limited to cases in which the bar of limitation applies to suits for possession of property. The right of the true owner to lands cannot be extinguished, however long such an attachment may continue; nor can lands attached under s. 146 of the Code of Criminal Procedure be ever forfeited to Government. *RAJAH OF VENKATAGIRI v. ISAKAPALLI SUBBIAH* (1902)

[I. L. R., 28 Mad., 410]

—s. 26—

See RIGHT OF WAY.

—s. 28—

See ante, ss. 23 AND 28 AND SCH. II, ARTS. 120, 142 AND 144.

—meaning of "possession"—

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION. 6 C. W. N., 601

—Limitation Act (XV of 1877), ss. 7, 13 and 28, and Sch. II, Arts. 142, 144—Joint family—Separate estate—Possession, discontinuance of—Property, extinguishment of right to—Under s. 7 of the Limitation Act, a person under disability cannot bring his suit after 2 years after the disability

I. L. R., 20 I. L. R., 10

Schedule II.

—Art. 2—

See post, ART. 28. 7 C. W. N., 728

See BOMBAY MUNICIPAL ACT (BOM. ACT III of 1883), s. 627.

[I. L. R., 25 Bom., 387]

—Art. 3—

See post, ART. 3—

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[7 C. W. N., 243]

LIMITATION ACT, 1877—continued.

Schedule II—continued.

—Art. 10—

—Act XV of 1877 (Indian Limitation Act), Sch. II, Arts. 10, 120, 144—Suit for pre-emption against heir of mortgagee by conditional sale—"Physical possession," meaning of—Accrual of cause of action in suit for pre-emption of property mortgaged by conditional sale—Expiration

LIMITATION ACT, 1877—continued.

Schedule II—continued.

—Art. 11—concluded.

partition of the family property of the defendants, prayed that the order of the 12th March, 1898, might be set aside and a partition directed, and that at such partition he might be allotted and put in possession of the land in dispute. *Held* that the suit

dure Code, and as it was in form and substance one for establishing the plaintiff's right to and for the present possession of the particular land in question *DHIMAPPA v. IRAPPA* (1901)

[I. L. R., 28 Bom., 148]

—Art. 12—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.

[I. L. R., 29 Calc., 628]

—Art. 13—

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

[5 C. W. N., 649]

—Art. 14—

See BENGAL TENANCY ACT, s. 107.

[I. L. R., 28 Calc., 678]

1.—*Estate Partition Act (Bengal Act VIII of 1876)*, ss. 116, 149 and 180—Suit for possession.—In a partition proceeding before the Collector, under the Estate Partition Act, R, a party to that proceeding, contended that certain land measured as part of the estate under partition was not part of that estate, but appertained to his *howla*. The Revenue authorities inquired into his contention, under s. 116 of the Act, and decided it against him. On a suit having been brought by him, after the lapse of one year, for a declaration that the disputed land was part of his *howla*, the defence was that, the suit not having been brought within one year from the date of the order passed by the Revenue authorities, it was barred by limitation. *Held* that the suit was so barred *Laloo Singh v. Parna Chander Ranjoree* (1896), I. L. R., 24 Calc., 143, distinguished. *PARBATI NATH DUTT v. BIRMOHUT DUTT* (1901) I. L. R., 29 Calc., 387;

[acc., 8 C. W. N., 92]

2.—*Execution of decrees—Civil Procedure Code*, ss. 320 et seqq.—Sale held by Collector, but afterwards set aside—Suit by auction-purchaser to have sale confirmed—Limitation.—In execution of a decree which had been transferred to the Collector for execution under the provisions of s. 320 of the Code of Civil Procedure, certain immovable property was sold by auction on the 22nd of September.

TO THE WORDS PHYSICAL POSSESSION, BY WHICH IS

—Art. 11—

See ante, s. 7, AND SCH. II, ART. 11.

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY

[I. L. R., 29 Calc., 25]

—*Civil Procedure Code (Act XIV of 1892)*, s. 335—Order under s. 335—Subsequent suit—Partition—Present possession—Limitation.—The plaintiff purchased certain land at a Court sale in execution of a money decree against defendant No. 1. In attempting to obtain possession he was obstructed by defendant No. 8, who claimed the land under a mortgage with possession from the co-par-

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Art. 14—concluded.**

1891. But the judgment-debtors applied to the Collector to have the sale set aside, and, on the 30th October, 1891, the Collector set aside the sale and ordered a fresh proclamation of sale to be issued. The order of the Collector setting aside the sale was,

the bulk of property. The mortgage-money was paid into Court in discharge of the decree, and satisfaction of the decree was entered up; and, on the 21st of December, 1891, the execution case was struck off. On the 12th of September, 1891, the auction-purchaser, who, after the sale had been set aside, had withdrawn the purchase-money paid in by her, brought a suit to have the sale in her favour confirmed. Held that, inasmuch as the plaintiff's claim involved the setting aside of the Collector's order of the 30th of October, 1891, by which the sale to the plaintiff had been set aside, the suit was barred by limitation, having regard to Art. 14 of the second Schedule to Act XV of 1877. *Malkarjuna v. Narhari*, 1901, 25 Cal. 179, distinguished.

Dari Babu, Weekly Notes, 1894, p. 78, held not to be of effect since the ruling of the Privy Council in *Malkarjuna v. Narhari*. *Moti Lal v. Karabaldin* (1897), 1 L. R., 25 Cal., 179, distinguished. *RAGHUNATH PRASAD v. KANTH BASU* (1902)

[L. R., 24 All., 467]

—Art. 18—**See FALSE IMPRISONMENT.**

[L. R., 30 Cal., 572]

—Arts. 24 and 25—

—Arts. 23, 24, 25, 36—Limitation—Suit to recover damages on account of injury caused by a false report made to the police—Suit for damages for malicious prosecution—The defendant laid information at a police station against the plaintiff, alleging that the plaintiff and several other persons entered the female apartments of the defendant, broke open locks, plundered his goods, and caused hurt to his wife. Thereupon an inquiry was made by the police, with the result that the information was found to be false. The defendant was prosecuted under s. 182 of the Indian Penal Code, convicted, and sentenced to six months' imprisonment. The plaintiff thereafter sued to recover damages from the defendant "as compensation on account of mental distress and defamation." Held that this was not a suit for damages on account of malicious prosecution, for no prosecution had been initiated; but it was a suit for compensation for libel or slander, the limitation applicable to which was that prescribed by Art. 24 or Art. 25 of the second Schedule to Act XV of 1877. *Austin v. Dowling* (1870), L. R., 6 C. P., 534; *Yeats v. The Queen* (1865),

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Arts. 24 and 25—concluded.**

L. R., Q. B. D., 648, and *Queen-Empress v. Bisheshwar* (1893), 1 L. R., 15 All., 124, referred to. *ISHRI v. MUHAMMAD HADI* (1902)

[L. R., 24 All., 388]

—Art. 28—

—Bengal Tenancy Act (VIII of 1855), ss. 121, 140—Suit for wrongful distraint—Limitation Act (XV of 1877), Sch. II, Arts. 2, 23, 29.—The limitation applicable to a suit for compensation for illegal distraint of crops by the landlord is one year from the date of the wrongful seizure. Art. 23 or 29, and not Art. 2, of the 2nd Schedule to the Limitation Act applies to such suits. *JAGATJIBAN NANDO ROY v. SABAT CHANDRA GHOSH* (1902)

[7 C. W. N., 728]

—Art. 29—

See ante, ART. 23 . 7 C. W. N., 728

See post, ARTS. 42 AND 29

—Suit for money wrongfully taken out in execution—Bengal Regulation VIII of 1819—Patta taluk.—A suit to recover the surplus proceeds of a sale held under Bengal Regulation VIII of 1819, wrongfully taken out by the defendant in execution of a decree against a third party, does not come under Art. 23, Sch. II, of the Limitation Act. *Jagjivan Jachherdas v. Gulam Jilani Chaudhri* (1893), 1 L. R., 8 Bom., 17, dissented from. *LAKSHMI PRIYA CHOWDHURANI v. RAMA KANTA SHAMA* (1903)

[L. R., 30 Cal., 440;

s.c., 7 C. W. N., 520]

—Art. 31—

See BILL OF LADING.

[L. R., 28 Bom., 562]

—Art. 35—

See RESTITUTION OF CONJUGAL RIGHTS.

[L. R., 28 Cal., 37]

—Husband and wife—Parsi—Suit for restitution of conjugal rights—Limitation Act (XV of 1877), s. 23, Sch. II, Art. 35—Parsi Marriage and Divorce Act (XV of 1865).—A suit under the

[L. R., 25 Bom., 644]

—Art. 36—

See HINDU LAW—ENDOWMENT—DEALING WITH, AND MANAGEMENT OF, ENDOWMENT . . . 5 C. W. N., 273

—Arts. 42 and 29—

—Suit for compensation for wrongful seizure of movable property under legal process—Suit for compensation for injury caused by an injunction

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Arts. 42 and 29—concluded.**

wrongfully obtained—The defendant, on the 18th of February, 1893, attached in execution of his decree, certain country soap, as being the property of his judgment debtor. The plaintiff intervened, claiming the soap as his, and his objection was allowed. The defendant thereupon instituted a suit, under s. 293 of the Code of Civil Procedure, for declaration of the

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defendant's appeal, obtained possession of the soap. He then sued the defendant to recover damages for the loss of part and the deterioration of the rest of

[I. L. R., 24 All., 148

—Art. 47—

1.—Query whether Art 47 applies to an order under s. 146 of the Code of Criminal Procedure *DEO NARAIN CHOWDHURY v. WEBB* (1900)

[I. L. R., 28 Calc., 88;
s.c., 5 C. W. N., 180

2.—*Mamlatdars' Courts Act* (Bom. Act III of 1876), s. 13—Possessory suit—Mamlatdar's Court—In a possessory suit instituted in a Mam-

—Arts. 48, 49 and 145—

—Deposit—Suit to recover property deposited for safe custody.—In October, 1897, the plaintiff's

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Art. 57—**

—Act IX of 1872 (*Indian Contract Act*), s. 176—Pawnee and pawnee—Suit to recover balance of debt after sale of articles pawned—

the date of the loan. *Madan Mohan Lal v. Kanhai Lal* (1895), I L R., 17 All., 281, and *Ram Chandra v. Anaj, Bom.* P. J. 1886, p. 161, referred to. *ALI KHAN v. DEBI PRASAD* (1901)

[I. L. R., 24 All., 251

—Arts. 59 and 60—

See post, ART. 145 . 7 C. W. N., 476

—Arts. 60 and 64—

—Money payable on demand—Deposit as a trustee—Money found due on account stated—A suit was brought by the plaintiff on the 28th June, 1897, to recover a certain sum of money from the

certain commission in return. There was also a verbal agreement to the effect that sums of money would be sent by the plaintiff to the defendant, who would hold the same in deposit as a trustee; and that on

—Art. 61—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

[I. L. R., 28 Mad., 686

—Arts. 62 and 97—

1.—Contract—Failure of consideration—Vendor and purchaser—No title in vendor to part of land sold—Failure to give possession to vendee—Suit by vendee for refund of purchase-money—Compensation—Damages—On the 25th August, 1891, A sold certain property, consisting of forty-two separate plots of land, to the plaintiff, by a sale-

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Art. 14—concluded.**

1891. But the judgment-debtors applied to the Collector to have the sale set aside, and, on the 30th October, 1891, the Collector set aside the sale and ordered a fresh proclamation of sale to be issued. The order of the Collector setting aside the sale was,

the bulk of property. The mortgage-money was paid into Court in discharge of the decree, and satisfaction of the decree was entered up; and, on the 21st of December, 1891, the execution case was struck off. On the 12th of September, 1894, the auction-purchaser, who, after the sale had been set aside, had withdrawn the purchase-money paid in by her, brought a suit to have the sale in her favour confirmed. Held that, inasmuch as the plaintiff's claim involved the setting aside of the Collector's order of the 30th of October, 1891, by which the sale to the plaintiff had been set aside, the suit was barred by limitation, having regard to Art. 14 of the second Schedule to Act XV of 1877. *Mal-*

(1897), *I. L. R.*, 25 Cal., 179, distinguished. *RAGHUNATH PRASAD v. KAMIZ RASUL* (1902)

[*I. L. R.*, 24 All., 467

—Art. 18—

See FALSE IMPRISONMENT.

[*I. L. R.*, 30 Cal., 872

—Arts. 24 and 25—

—Arts. 23, 24, 25, 36—Limitation—Suit to recover damages on account of injury caused by a false report made to the police—Suit for damages for malicious prosecution.—The defendant laid information at a police station against the plaintiff, alleging that the plaintiff and several other persons entered the female apartments of the defendant, broke open locks, plundered his goods, and caused hurt to his wife. Thereupon an inquiry was made by the police, with the result that the information was found to be false. The defendant was prosecuted under s. 182 of the Indian Penal Code, convicted, and sentenced to six months' imprisonment. The plaintiff thereafter sued to recover damages from the defendant "as compensation on account of mental distress and defamation." Held that this was not a suit for damages on account of malicious prosecution, for no prosecution had been initiated; but it was slander, the plaintiff was entitled to recover damages prescribed by the Act. *I. L. R.*, 31 C.

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Arts. 24 and 25—concluded.**

L. R., Q. B. D., 648, and *Queen-Empress v. Bish-eshar* (1893), *I. L. R.*, 16 All., 124, referred to. *ISHMI v. MUHAMMAD HADI* (1902)

[*I. L. R.*, 24 All., 368

—Art. 28—

—Bengal Tenancy Act (VIII of 1885), ss. 121 140—Suit for wrongful distraint—Limitation Act (XV of 1877), Sch. II, Arts. 2, 28, 29—The limitation applicable to a suit for compensation for illegal distraint of crops by the landlord is one year. *I. L. R.*, 23 or 29, Limita- NARDO

[*I. L. R.*, 23 N., 728

—Art. 29—

See ante, ART. 28 . 7 C. W. N., 728

See post, ARTS. 42 AND 29.

—Suit for money wrongly taken out in execution

against a third party, does not come under Art. 29, Sch. II, of the Limitation Act. *Jaggiran Javerdas v. Gulam Jilani Chaudhri* (1893), *I. L. R.*, 8 Bom., 17, dissented from. *LAKSHMI PRIYA CHOWDHURANI v. RAMA KANTA SHAMA* (1902)

[*I. L. R.*, 30 Cal., 440; S.C., 7 C. W. N., 520

—Art. 31—

See BILL OF LADING.

[*I. L. R.*, 26 Bom., 563

—Art. 35—

See RESTITUTION OF CONJUGAL RIGHTS.

[*I. L. R.*, 28 Cal., 37

—Husband and wife—Paras—Suit for restitution of conjugal rights—Limitation Act (XV of 1877), s. 23, Sch. II, Art. 35. Paras: Marriage and Divorce Act (XV of 1865).—A suit under the Paras: Marriage and Divorce Act (XV of 1865), by a husband to compel his wife to resume cohabitation with him, is not barred by limitation. *I. L. R.*, 25 Bom., 644

[*I. L. R.*, 25 Bom., 644

—Art. 36—

See HINDU LAW—ENDOWMENT—DEALING WITH, AND MANAGEMENT OF, ENDOWMENT . . . 5 C. W. N., 273

—Arts. 42 and 29—

—Suit for compensation for wrongful seizure of movable property under legal process—Suit for compensation for injury caused by an injunction

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Arts. 42 and 29—concluded.**

successfully obtained—The defendant, on the 18th of February, 1893, attached in execution of his decree, certain country soap, as being the property of his judgment-debtor. The plaintiff intervened, claiming the soap as his, and his objection was allowed. The defendant thereupon instituted a suit, under s 293 of the Code of Civil Procedure, for declaration of the title of his judgment-debtor, but was defeated, and his appeal in that suit was dismissed on the 23rd of March, 1893. At the time of the institution of this suit, the defendant applied for and obtained an injunction directing that the soap should not be made over to the plaintiff. Ultimately the plaintiff, on the 17th of June, 1893, after the dismissal of the defendant's appeal, obtained possession of the soap. He then sued the defendant to recover damages for the loss of part and the deterioration of the rest of the soap while under the defendant's attachment. *Held* that Art. 42, and not Art. 29, of the second Schedule to the Indian Limitation Act, 1877, applied, and that the suit was not barred by limitation. **1 DU MEX v. RAHMAT-ULLAH (1901)**

[I. L. R., 24 All., 146]

—Art. 47—

1.—Query whether Art. 47 applies to an order under s 146 of the Code of Criminal Procedure. **DEO NARAIN CHOWDHURY v. WEBB (1900)**

[I. L. R., 28 Calc., 86;
S.C., 5 C. W. N., 160]

2.—*Mamlatdars' Courts Act (Bom. Act III of 1876), s. 13—Possessory suit—Mamlatdar's Court*—In a possessory suit instituted in a Mam-

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Art. 57—**

—Act IX of 1872 (Indian Contract Act), s. 176—Pawnee and pawnee—Suit to recover balance of debt after sale of articles pawned—

—Arts. 59 and 60—

See post, ART. 145. 7 C. W. N., 476

—Arts. 60 and 64—

—Money payable on demand—Deposit as a trustee—Money found due on account stated—A

certain commission in return. There was also a verbal agreement to the effect that sums of money would be sent by the plaintiff to the defendant, who would hold the same in deposit as a trustee; and that on demand the defendant would pay to the plaintiff the

Kumars Bibi (1899), I. L. R., 16 Calc., 25, referred to. LAZARUS v. KRISHNA CHUNDER DE (1900)

[I. L. R., 28 Calc., 393]

—Art. 61—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

[I. L. R., 28 Mad., 686]

—Arts. 62 and 67—

1.—*Contract—Failure of consideration—Vendor and purchaser—No title in vendor to part of land sold—Failure to give possession to vendee—Suit by vendee for refund of purchase-money—Compensation—Damages*—On the 25th August, 1891, A sold certain property, consisting of forty-two separate plots of land, to the plaintiff, by a sale-

PURUSHOTTAM DATARAM v. CHATARGIR GURU ANJUNGIE (1900). I. L. R., 25 Bom., 82

—Arts. 48, 49 and 145—

—Deposit—Suit to recover property deposited for safe custody—In October, 1897, the plaintiff's mother deposited ornaments, clothes and money with

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Art. 64—concluded**

partners in the business *Held* that the suit was governed, as regards limitation, by Art. 64 of the second Schedule to the Indian Limitation Act, 1877; that limitation, which had begun to run in favour of the deceased from the date of the account stated,

—Art. 83—

See post, ARTS 97 AND 98.

—Art. 89—

—*Suit for account between principal and agent*
—*Termination of agency*—“*Movable property*”
—*Money*—*Evidence as to account stated*—The appellant and respondent, two brothers, were agents the one for the other in dealing with their joint estate, and the agency was found on the evidence to have continued until the 22nd of December, 1885, when the appellant brought a suit against the re-

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Art. 91—concluded.**

mortgage-bond and for possession of the mortgaged property, alleging that the mortgage was a sham transaction and that she, the plaintiff, had subsequently remained in possession and had only been dispossessed within three years before suit: *Held* that, if the plaintiff's allegations as to remaining in possession were true, the period of limitation for the suit could not be computed from the date of the

2.—*Suit to recover possession*—*Kobala, setting aside of, if necessary*.—Where it was alleged that defendant was in unlawful possession by virtue of a *kobala* executed by plaintiff's father, and a suit was brought to recover possession of the land: *Held* that the suit was governed by Art. 91 of Sch II to the Limitation Act, inasmuch as plaintiff could not succeed unless he obtained a declaration that the *kobala* was not a valid one CHUNDER NATH ROSE v. RAM NIDHI PAL (1902)
[8 C. W. N., 863]

3.—*Spec*
tion—
1877)
Specific
adjudged void and to have it delivered up and cancelled. BAKATHAM NANNAM v. KHAIBETJI JIVAJISHET (1903) . I. L. R., 27 Bom., 580

—Art. 97—

See ante, ARTS 92 AND 97.

1.—*Civil Procedure Code (Act XIV of 1892), s. 43*—*Suit for specific performance*—*Subsequent suit for money paid on a consideration that failed*.—Defendant having failed to convey certain property belonging to himself and his son to plaintiff as agreed, plaintiff obtained a decree for specific performance, in pursuance of which the price was paid and a conveyance executed. Plaintiff was then obliged to sue for possession, when it was found that the sale did not bind the son's interest, and on grounds of convenience plaintiff was awarded the value of defendant's share instead of a decree for partition. He now sues to recover the balance of the price paid, and it was contended that the suit was, in fact, one for damages for breach of the contract to convey, and as such was barred under s. 43 of the Code of Civil Procedure, inasmuch as the damages claimed could have been sued for in the alternative in the previous suit for specific performance. *Held* that the suit was not barred; it being, in fact, for the recovery of money paid on a consideration that had failed, and the cause of action being different from that in the suit for specific performance. *Held, also*, that the suit was not barred by limitation, inasmuch as the failure of consideration must be taken to have occurred when it was found, in the suit for possession, that

there set out, and inconsistent with the existence of the alleged settlement ASGHAR ALI KHAN v. KHURSHID ALI KHAN (1901)

[I. L. R., 24 All., 27;
a.c., I. R., 29 I. A., 227]

—Art. 91—

See ARBITRATION—DUTIES AND POWERS OF ARBITRATORS . 5 C. W. N., 585

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS

[I. R., 29 I. A., 203]

See DOCUMENT . I. L. R., 30 Cal., 433

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION ON ALIENATION . I. L. R., 30 Cal., 890

1.—*Suit to cancel a document*—*Cause of action*.—Where a plaintiff sought for the cancellation of a

LIMITATION ACT, 1877—continued.

Schedule II—continued.

—Art. 97—concluded.

the plaintiff was not entitled to recover the son's share; which date was less than three years from that upon which the present suit had been instituted,

ance—Agreement uccidren unenforceable—Alternative claim for refund of consideration paid thereunder—Limitation—The defendants, against whom a decree for foreclosure was outstanding, agreed to sell certain immovable property to the plaintiff, and the plaintiff paid into Court, as part of the consideration, the amount due by the defendants under the foreclosure decree. The defendants neither executed a conveyance of the property which they had agreed to sell, nor did they return to the plaintiff the money which he had paid on their behalf. The plaintiff thereupon sued the defendants, claiming in the alternative either a decree for specific performance of the agreement to sell, or a refund of the money paid by him as part of the consideration for the

was therefore entitled to get back the money which he had paid under the agreement, and (3) that the plaintiff's alternative claim for a refund on failure of consideration was governed as to limitation by Art. 97 of the second Schedule to the Indian Limitation Act, 1877, and was not barred by limitation, inasmuch as limitation only began to run from the date of the High Court's decree declaring the

—Arts. 97 and 83—

—Vendor and purchaser—Sale of property—No title in vendor to part of property sold—Suit by purchaser for damages—Failure of consideration—Cause of action—Covenant for quiet enjoyment—On the 22nd November, 1880, the first and second defendants, for themselves and for the third defendant, sold a certain house to the plaintiff's father. The sale deed, which was duly registered, contained the following clause: "We (vendors) are in enjoyment of the house as its owners, and if any one were to obstruct you in the enjoyment of the house we would remove the obstruction so as to put you to no trouble." In the year 1892 the plaintiff brought a suit to recover possession of the house. Both the lower Courts rejected the

LIMITATION ACT, 1877—continued.

Schedule II—continued.

—Arts. 97 and 83—concluded.

the house, of which he was put in possession. On the 24th August, 1899, the plaintiff brought the present suit, claiming *inter alia* from defendants 1 and 2 to recover Rs 225 as damages sustained by him by reason of his being deprived of the one-third share of the house. Held that the claim for damages was a claim to recover money upon an existing consideration that had failed, and that it fell under Art. 97, Sch. II, of the Limitation Act (XV of 1877), and not Art. 83, and was therefore time-barred, not having been brought within three years from the failure of consideration. The clause in the sale-deed was not a contract of indemnity. It was at most a covenant for title and quiet enjoyment. The failure of consideration took place when the plaintiff endeavoured to obtain possession of the property and, being opposed, found himself

—Art. 89—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR

[I. L. R., 26 Mad., 686]

—Art. 106—

See ante, ss. 7 AND 8 AND SCH. II
ART. 106.

—Hindu Law—Mitakshara doctrine of joint family property—Partnership—F and his five sons constituted an undivided Hindu family. F and his three elder sons lived apart from the two younger sons, and were in possession of some ancestral property. The two younger sons were plaintiff

had been carried on jointly by him and first defendant until 1894, and continued by the first defendant until the institution of the suit. It was alleged that, although there had not been an express agreement of partnership, in the circumstances of the case an agreement under which plaintiff had

—Art. 110—

See post, ARTS. 120 AND 110.

[I. L. R., 25 Bom., 556]

See LAND-REVENUE.

[I. L. R., 26 Mad., 730]

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Art. 111—**

—Arts. 111 and 116—Suit to recover unpaid purchase-money, and to enforce vendor's lien.— A suit to recover unpaid purchase-money due in respect of a sale of land, and to enforce the vendor's lien, is governed by Art 111 of Sch II to the Limitation Act. *Natesan Chetti v. Soundararaja Ayyangar, I. L. R., 21 Mad., 141*, followed. *Har Lal Muhamdi, I. L. R., 31 All., 434*, discussed. *AYUTHALA v. DAYUMMA (1900)*

[I. L. R., 34 Mad., 333]

—Art. 113—

See ARBITRATION—AWARDS—ENFORCING AWARDS. I. L. R., 23 All., 285

—Art. 116—

*1.—No contract as to payment of purchase-money—*Where, on a sale of land, there was no con-

[I. L. R., 24 Mad., 233]

litigation in which *B* was suing *A* on a promissory note, a compromise was arrived at, under which *A* undertook to execute a mortgage in favour of *B*.

November, 1891, which he subsequently executed against *A*, recovering the value of the promissory note upon which he had originally sued. He also retained the mortgage which had been executed in the compromise. *A* now sued to recover from *B* the amount which *B* had collected under the decree, stating the cause of action as having arisen on the date of that collection, namely, 25th October, 1893, when it was contended that the suit was not maintainable inasmuch as the decree had not been set aside, and that, even if treated as a suit for

suit had not been brought within three years from that date, the plaint having been filed on 14th September, 1896: *Held* that, inasmuch as all necessary allegations were made in the plaint, the contract and its breach being alleged, and as the defendant understood what the claim against him was, the plaint sufficiently disclosed a cause of action for damages for the breach of contract. *Held*, also, that the undertaking in the mortgage was "an

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Art. 116—concluded.**

3.—Receipt for money, containing terms of sale, signed by vendor and not by purchaser.— Contract in writing registered.—The mere recital, in a sale-deed, that the consideration has been paid, is not a "contract in writing" to pay the consideration, within the meaning of Art 116 of the second Schedule to the Limitation Act; and, where a sale-deed contains the contract of sale which has preceded the actual sale, Art 116 may apply even though the sale-deed contains an acknowledgment that the consideration has been paid, when in fact it has not been paid. *Achutha v. Dayumma, I. L. R., 24 Mad., 233*, followed. *Semble*, that a document executed and given by a vendor of property to his purchaser, and registered, acknowledging payment of a sum of money on account of the purchase price, and providing that the balance should be paid within a certain date, is a "contract in writing registered" within the meaning of Art 116 of the second Schedule of the Limitation Act, though it

4.—Breach of contract in writing registered.— Lease of villages. Failure by lessee to put lessor in possession.—Executory contract to deliver such possession as the nature of the property admits. By a registered document, dated 11th November, 1893, defendant leased certain villages to plaintiff for a term of seven years and eight months. On 5th December, 1893, plaintiff applied to be put into possession of the villages, but never obtained possession. On 11th November, 1899, plaintiff brought this suit for possession, and in the alternative for the damages which he had sustained by the failure on the part of defendant to put him into possession. On the plea of limitation being set up: *Held* that the claim for damages was not barred, it being governed by Art 116 of Sch. II to the Limitation Act. Both in the case of a sale and of a lease, the registered instrument by which such sale or lease is effected not only operates as a grant, but, in the absence of a contract to the contrary, is also construed and operates as an executory contract to deliver to the vendee or lessee such possession of the property as its nature permits; and the breach of such an obligation is a breach of a contract in writing registered, within the meaning of the article referred to. *ZAMINDAR OF VIZIANAGRAM v. BEHARA SETHA-SIRAYATA PATRICU (1901)*

[I. L. R., 25 Mad., 567]

LIMITATION ACT, 1877—continued.

Schedule II—continued.

—Art. 118—

See ante, s. 3 AND SCH. II, ART. 118

See post, ARTS. 119, 118 AND 144.

1.—Adoption—Reversioner—Limitation Act (XV of 1877), Sch. II, Arts. 118 and 141—Suit by a reversioner for possession of immovable property.—A suit by a Hindu reversioner to recover possession of immovable property after the death of a

become aware more than six years before suit. *Raija Khoda*, a Hindu, died in 1863, leaving behind him no childless widow. In 1884 plaintiffs applied for a certificate of heirship to the deceased's estate, under Bombay Regulation VIII of 1827. The widow opposed the application, alleging that the deceased had adopted a son (defendant No 1) in 1863-64. The

plaintiffs, as reversionary heirs, sued to recover possession of the deceased *Raija's* property. The defendant pleaded that he was the adopted son of *Raija*, and that the suit was barred by limitation. Both the lower Courts held that the adoption was not proved, and that the suit was not time-barred. *Held*, on second appeal, that, though the defendant's adoption was not proved, yet, as he had all along asserted his adoption to the knowledge of the plaintiffs since 1884, plaintiff's suit was barred by Art. 118 of Sch. II to the Limitation Act (XV of 1877). *BABOT NARAN v. BABOT JESANG* (1900)

[I. L. R., 25 Bom., 28

2.—Adoption—Declaration that the adoption is invalid—Knowledge—Death of adopter—Date from which limitation runs.—B adopted N on the

which the plaintiffs came to know of the adoption, was barred under Art. 118 of Sch. II to the Limitation Act (XV of 1877), and that the

—Art. 118—

1.—Adoption—Suit for possession of immovable property, plaintiff claiming as adopted son, his title as such having been denied by defendant more than six years before suit.—*Held* that Art. 119 of the second Schedule to the Indian Limitation Act, 1877, did not apply to a suit for possession of immovable property in which the plaintiff claimed as the adopted son of the last male owner of the property, and in which the plaintiff's adoption was

LIMITATION ACT, 1877—continued.

Schedule II—continued.

—Art. 118—concluded.

denied by the defendant, and the plaintiff himself alleged that his right as adopted son had been interfered with more than six years before the institution of his suit. *Basdeo v. Gopal* (1886), I. L. R., 8 All., 644; *Ganga Sahai v. Lekhray*

(1897), I. L. R., 24 Bom., 159, and *Harial*

Pranlal v. Bai Rewa (1893), I. L. R., 21 Bom., 376, followed. *Inda v. Jehanjira*, *Weekly Notes*, 1890, p. 231; *Parvati Ammal v. Saminatha Gurukul* (1896), I. L. R., 20 Mad., 40, and *Shrinivas v. Hanmant* (1899), I. L. R., 24 Bom., 260, dissented from. *Jagadamba Chaudhrani v.*

LAL v. MURLIDHAR (1901)

[I. L. R., 24 All., 195

2.—Adoption—Invalidity of adoption—Limitation—Art. 119 of Sch. II to the Limitation Act (XV of 1877) applies to a case where

was rejected merely because it might be barred as it had to rely on the adoption alone. *Shrinivas v. Hanmant* (1899), I. L. R., 24 Bom., 260, referred to. *GANGABAI v. TARABAI* (1902)

[I. L. R., 28 Bom., 720,

—Arts. 118, 118 and 144—

—Suit by an adopted son more than six years after interference with plaintiff's rights—Claim for declaration as to adoption, and to recover possession of property due to plaintiff as adopted son.—Maintainability—Plaintiff's rights, as the adopted son of A, were interfered with, in connection with certain immovable property, in 1839. In 1897 plaintiff sued for a declaration that he was the adopted son of A, and sought to recover the property. *Held* (BHASKYAM AYYANGAR, J., dissenting) that the suit was barred under Art. 119 of Sch. II to the Limitation Act. *Jagadamba Chaudhrani v. Dakhina Dohun*, I. L. R., 13 I. A., 84, followed. *Parvati Ammal v. Saminatha Gurukul*, I. L. R., 20 Mad., 40, and *Shrinivas v. Hanmant* (1899), I. L. R., 24 Bom., 260, approved. *Per MOORE, J.*—Where a plaintiff cannot obtain a decree for possession without a decision that an adoption is invalid or never in fact took place, or that an adoption is valid

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Arts. 118, 119 and 144—concluded.**

the question whether his claim is barred by limitation must be decided with reference to the provisions of Arts. 118 and 119 of Sch. II to the Limitation Act *Per BRASHYAM ATYANGAR, J.*—The suit was governed by Art. 144 Art. 119 is applicable only to a suit of the character defined by s 43 of the Specific Relief Act, for a declaration that the plaintiff is entitled to a status or legal character as adopted son. In the present case, the plaintiff having been out of, and the defendant having been in, possession since 1859, plaintiff could not maintain a suit for a mere declaration of title, and the only suit he could maintain was the present, which was governed by Art. 144, and was, in consequence, not barred. *BATNAMASARI v. AKILANDAKMAL (1903)*

[I. L. R., 26 Mad., 291]

—Art. 120—

See ante, ss. 23 AND 28 AND SCH. II, ARTS. 120, 142 AND 144.

See ante, SCH. II, ART. 10.

[I. L. R., 24 All., 17]

See BENGAL TENANT ACT, s 107.

[I. L. R., 28 Calc., 676]

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR

[I. L. R., 28 Mad., 686]

See DECLARATORY DECREES, SUIT FOR—SUITS CONCERNING DOCUMENTS

[I. L. R., 29 I. A., 203]

See EXECUTOR . 7 C. W. N., 476

See HINDU LAW—ENDOWMENT—DEALING WITH, AND MANAGEMENT OF, ENDOWMENT . 3 C. W. N., 273

See LAND-REVENUE.

[I. L. R., 28 Mad., 730]

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R., 27 Bom., 516

1.—*Damages*—Under Art. 120 of Sch. II to the Limitation Act, damages for more than six years previous to the institution of the suit cannot be awarded. *JOGESHUR BHAGAT v. GHANASHAM DASS (1901)* . 5 C. W. N., 356

2.—*Limitation Act (XV of 1877), Sch. II, Arts. 120, 127*—Mahomedan family—Suit to recover share in joint-family property—Where, on the death of a Mahomedan, the plaintiff, his daughter, claimed her share by inheritance in properties alleged to be the properties of the joint family of the plaintiff and her brothers, and it was found that she had ceased to be a member of the family since her marriage: Held that Art. 120, and not Art. 127, of Sch. II to the Limitation Act applied. *BARASHA v. MASUMMAKHA (1889)*, I. L. R., 14 Bom., 70, dissented from. *Mallakke v. Thammappa (1891)*, I. L. R., 15 Mad., 156; *Amme Raham v. Zia Ahmed (1890)*, I. L. R., 13 All., 253;

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Art. 120—continued.**

Mahomed Akram Shaha v. Anarbi Chowdhurani (1895), I. L. R., 23 Calc., 954, and *Kartick Chunder Ghuttuck v. Sarada Sundari Debi (1891)*, I. L. R., 18 Calc., 642, approved. *POYRAM BIBI v. LAKHU KHAN BEPARI (1901)* . 7 C. W. N., 155

3.—*Hindu Law*—Joint Hindu family—Liability of sons to pay their father's debts—Limitation.—The father of a joint Hindu family executed on

Art. 120 of the second Schedule to the Indian Limitation Act 1877 applied and—

4.—*Alienation by widow*—Subsequent suit to set it aside—Withdrawal of suit without permission to bring a fresh suit—Confirmation of original alienation—Fresh cause of action to sons of the daughters—F, who was possessed of lands, died in 1868, leaving a widow and three daughters him surviving. In 1874, the widow alienated the land. In 1893, the daughters sued to have that alienation set aside, but withdrew the suit, on the ground that the alienation was valid, without

barred. *MULLAPUDI RATNAM v. MULLAPUDI RAMAYYA (1901)* . I. L. R., 25 Mad., 731

5.—*Limitation*—Suit against representative of deceased pleader to recover money received by the pleader in his professional capacity on behalf of a client.—Held that a suit to recover from the son of a deceased pleader, as representative of his father, money which had been received by the pleader in his professional capacity on behalf of a client, was

LIMITATION ACT, 1877—continued.

Schedule II—continued.

—Art. 133—

See CONTRIBUTION, SUIT FOR—PAYMENT
OF JOINT DEBT BY ONE DEBTOR
[I. L. R., 26 Mad., 686]

- 1.—*Transfer of Property Act (IV of 1882),
s. 73—Mortgage—Surplus sale-proceeds at revenue*

having regard to the provision of a 73 to the
Transfer of Property Act, a suit like the present, to

2.—*Voluntary payment—Assessment—Payment*

due upon their land since the year 1891. Their
land formed part of a larger holding which
stood in one name in the revenue records, and
the assessment on which the plaintiff paid. He
now sued the defendants for contribution in
respect of the assessment paid for their part of
the holding, and contended that their land was
charged with the amount so paid by him, and that
the period of limitation applying to his claim was

LIMITATION ACT, 1877—continued.

Schedule II—continued.

—Art. 134—concluded.

period exceeding twelve years from the date of his
mortgage. A then instituted a suit for redemption;
when it was contended on behalf of C that A was

2.—*Inapplicability to case of insolu-
tary sale.*—Where, in execution of a money-decree,
immovable property of a judgment-debtor, in which
his real interest is only that of a mortgagee, is

voluntarily. *Muthu v. Kambalinga*, I. L. R., 12

3.—*Alienation of trust property by guru of a
matt for valuable consideration—Suit by his
successor to recover possession—Trustee, alienation
by—Adverse possession—Limitation.*—The guru
or manager of a certain matt, who, as trustee, held
certain property belonging to the matt, sold it for
value to the defendant in 1871. In 1898 his succes-
sor sued to recover it, contending that the vendor
had no power to alienate the trust property. Held
that the suit was barred by limitation, under Art
131 of Sch. II to the Limitation Act (XV of 1877).
DATTAGIRI GURU SHANKARJI GOSAVI v.
DATTATRAYA KRISHNA SINDE (1902)

[I. L. R., 27 Bom., 363]

4.—*Trust property—Wakf—Land held on
condition of service—Alienation.*—Where trust
property is alienated by the trustees, and the alienees
have been in possession by purchase for more than
twelve years, the suit, as one for the purpose of

—Arts. 131 and 144—

—*Temple property—Manager—Trustee—Lease
by manager—Suit by subsequent manager to recover*

—Art. 134—

1.—*"Purchased"—Sub-mortgage by a mortgagee
as if complete owner—Possession by sub-mortgagee
for over twelve years—Suit for redemption by
original mortgagee—Right of sub-mortgagee to*

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Art. 120—concluded.**

governed, as regards limitation, by Art. 120 of the second Schedule in the Indian Limitation Act, 1877. **BINDRAN BEHARI v. JAMUNA KUNWAR** (1902)

[I. L. R., 25 All., 55]

—Arts. 120 and 110—

—Assessment—Land-revenue—Suit for arrears of assessment.—The term "rent" is used in the Land-revenue Code (Bombay Act V of 1879) only with reference to those superior and inferior holders between whom the relationship of landlord and tenant subsists. Plaintiff was the *inamdar* of a certain village. Defendant held certain lands in

assessment. Defendant contended that plaintiff was not entitled to claim arrears for more than three

of 1877),
; that of
of land-
lord and tenant. **SADASHIV v. RAMKRISHNA**
(1901) I. L. R., 25 Bom., 558

—Arts. 120 and 125—

—Hindu law—Suit by presumptive reversionary heirs for decree declaring alienations by Hindu widow not binding except for life interest—Maintainability.—Assuming that a presumptive reversionary heir may be given a decree declaring that he is entitled to succeed, on the death of a widow, to property alleged to form part of her husband's estate, which property is in the possession

—Arts. 120 and 144—

—Limitation Act (XV of 1877), Sch. II, Art. 120—Suit by Dharmakarta to recover possession of a temple and of the properties belonging to it—Claim based on prescription, and not on hereditary right—Right to the properties secondary to, and dependent on, the right to the office.—Plaintiff, who was found to have been in adverse possession of a temple and its properties for at least six years (after which he was dispossessed by certain magisterial proceedings), sued to recover possession, as *Dharmakarta*

and that plaintiff, by his adverse possession of more

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Arts. 120 and 144—concluded.**

than six years, had obtained a title to it by prescription

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was not
the m
being only secondary to, and dependent on, the right to the office. **Tammirazu Ramasogi v. Pantina Narsiah**, 6 M. H. C. R., 301, followed. **KIDAMBI RAJAYA CHARIAR v. TIRUMALAI ASARI NALLUR RAGAVACHARIAR** (1902) I. L. R., 28 Mad., 118

—Art. 123—

—Legacy in satisfaction of indebtedness—

administered by the Court; and that the balance of principal and interest might be paid to plaintiff.

administered by the Court; and that the balance of principal and interest might be paid to plaintiff.

as a legacy.
used for a
property, and
had also

claimed a share *inasmuch* that there was no estoppel, and plaintiff's right to the legacy was not affected by that claim. **RAJAMANNAR v. VENKATAKRISHNAIA** (1902) I. L. R., 25 Mad., 381

—Art. 125—

See ante, Arts. 120 and 125.

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION. I. L. R., 30 Calc., 890

—Art. 127—

See ante, ART. 120 . 7 C. W. N., 155

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.

[I. L. R., 24 Mad., 441]

LIMITATION ACT, 1877—continued.

Schedule II—continued.

—Art. 132—

See CONTRIBUTION, SUIT FOR—PAYMENT
OF JOINT DEBT BY ONE DEBTOR
[I L. R., 28 Mad., 686]

1.—Transfer of Property Act (IV of 1892),
s. 73—Mortgage—Surplus sale-proceeds at revenue

creditors for the moneys which they had taken out from the Collectorate, with interest *Held* that, having regard to the provision of s. 73 to the Transfer of Property Act, a suit like the present, to

2.—Voluntary payment—Assessment—Payment

stood in one name in the revenue records, and the assessment on which the plaintiff paid. He now sued the defendants for contribution in respect of the assessment paid for their part of the holding, and contended that their land was

LIMITATION ACT, 1877—continued.

Schedule II—continued.

—Art. 134—concluded.

period exceeding twelve years from the date of his mortgage. *A* then instituted a suit for redemption when it was contended on behalf of *C* that *A* was

2.—Inapplicability to case of involuntary sale—Where, in execution of a money-decree,

3.—Alienation of trust property by guru of a matt for valuable consideration—Suit by his successor to recover possession—Trustee, alienation by—Adverse possession—Limitation—The guru

[I. L. R., 27 Bom., 363]

4.—Trust property—Wakf—Land held on condition of service—Alienation—Where trust property is alienated by the trustees, and the alienees have been in possession by purchase for more than twelve years, the suit, as one for the purpose of

—Arts. 134 and 144—

—Temple property—Manager—Trustee—Lease by manager—Suit by subsequent manager to recover

—Art. 134—

1.—"Purchased"—Sub-mortgage by a mortgagee as if complete owner—Possession by sub-mortgagee for over twelve years—Suit for redemption by original mortgagor—Right of sub-mortgages to be redeemed.—In 1861, *A* mortgaged certain lands to *B* for Rs 750. In 1881, *B* mortgaged the same lands to *C* for Rs 5,000. In so doing, *B* represented himself as the absolute owner of the property, and did not profess to transfer merely the interest which he possessed, and which was, in fact, only that of a mortgagee. *C* enjoyed possession of the lands for a

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Arts. 134 and 144—concluded.**

the property—Adverse possession.—In 1845, one

withdrawn. In 1836 the then manager brought a similar suit against the defendants, with a similar result. In April, 1900, the present plaintiff, as manager of the temple, filed this suit to eject the defendants, alleging that they were yearly tenants and that he had given them notice to quit. He contended that his predecessor, Krishna Swami, had no power to alienate the property of the temple. *Held* that the suit was barred by limitation. If the original lessor was not a trustee for the temple of the land in question, then the defendants had held by adverse possession, and the suit was barred under Art 141 of Sch II to the Limitation Act (XV of 1877). If the original lessor was a trustee, he had, as such, alienated the land for valuable consideration, and the suit was barred by Art 134 of Sch. II to the Limitation Act. The fact that there was a lease to the defendants, and not an absolute alienation, made no difference. A *mugeni* lease is a purchase *pro tanto* of the interest thereby assured. **NARAYAN MANJATA v RANGCHANDRA DEVASTHAN (1903)**

[I. L. R., 27 Bom., 373]

—Art. 136—

—Title of vendor not extinct at the time the vendee's suit is brought—Act IV of 1892 (Transfer of Property), s. 41—Transfer by ostensible owners—Inquiry by transferee as to title of transferors—Reasonable care.—In Art 136 of the second Schedule to the Indian Limitation Act, 1877, the words in the third column relate to the

possession at the date of the vendee's suit, such a suit would be too late. In a suit such as is contemplated by Art 136, when the purchaser succeeds in

employed, caused that property to be recorded in the revenue papers in the names of his young sons. The sons sold portions of the property, and mortgaged others. The vendee and mortgagee satisfied himself that the property had been recorded for some years in the names of the sons, but there stopped, and made no further inquiries as to whether the property really belonged to the sons, who were the ostensible owners,

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Art. 136—concluded.**

or not. *Held* that the transferee, though acting in good faith, had not taken reasonable care to ascertain that the transferor had power to make the transfer. **PARTAP CHAND v. SAITIDA BIBI (1901)**

[I. L. R., 23 All., 442]

—Arts. 136 to 138 and 144—

—Symbolical possession—Auction-purchaser—Suit for possession from judgment-debtor.—Where an auction-purchaser at a Court sale has obtained symbolical possession, he or his assigns may sue the judgment-debtor for actual possession, within twelve years from the date of obtaining such symbolical possession. Art. 144 of Sch. II to the Limitation Act (XV of 1877) applies. Arts. 136, 137 and 138 of Sch. II to the Limitation Act (XV of 1877) refer to cases where no possession, formal or actual, has been obtained through the Court. Art. 136 applies to a private purchaser from a person not in possession. Art. 137 applies to an auction-purchaser of the rights of a person not in possession. Art. 138 applies when the actual purchase is made of the rights of a judgment-debtor, who is in possession at the date of the sale. When an auction purchaser or his assign has obtained formal possession, but is disturbed by the judgment-debtor or his heirs, who have continued in actual possession, Art. 144 applies. **GORAL v. KRISHNARAO (1900)**

[I. L. R., 25 Bom., 275]

—Art. 139—

See post, Art. 144—ADVERSE POSSESSION.

[I. L. R., 28 Bom., 442]

See LANDLORD AND TENANT—NATURE OF TENANCY. I. L. R., 27 Bom., 515

See TITLE—MISCELLANEOUS CASES.

[I. L. R., 25 Mad., 507]

1.—Landlord and tenant—Denial by tenant of landlord's title—Option on part of landlord to determine tenancy—Period of limitation as from determination of tenancy by landlord.—The defendants in a suit for ejectment occupied land of which their predecessor in title had acquired possession under a deed which had been executed in 1836, and which created a tenancy from year to year in favour of that predecessor in title. That lease had been executed by the leading *mirasidars* of the village

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LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Art. 139—concluded.**

the option of the landlord; but, until the landlord indicates that he intends to exercise his option, the tenancy subsists. This principle applies to tenancies from year to year *SRINIVASA AYYAR v MUTHUSAMI PILLAI* (1900)

[I. L. R., 34 Mad., 246]

2.—*Malabar Law—Kutikanom lease for indefinite period—Customary law as to duration of lease*—By the customary law of Malabar, a tenant under a *kanom* or *kutikanom* lease is entitled not to be redeemed or ejected until the expiration of twelve years. But where no time is fixed for the duration of the lease it does not, under the customary law, determine on the expiration of twelve years from its date. A *kutikanom* lease was granted in 1873, no time being fixed for its determination. In 1899, a suit was brought to recover the land, on payment of the value of improvements, when the defence of limitation was set up. It was contended that the *kutikanom* lease determined, by the customary law of Malabar,

suit was not barred. *KELAPPAN v MADHAVI* (1901)

[I. L. R., 25 Mad., 452]

—Art. 141—

See **HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION**. I. L. R., 30 Calc., 990

1.—*Hindu law—Adverse possession—Suit by reversioner to estate held by a Hindu female*.—Under Art. 141 of the second Schedule to the Indian Limitation Act, 1877, a suit can be brought by a reversioner for possession of immovable property, to the possession of which a female heir had been entitled, within 12 years from the date of the death of the female heir, although she may have been out of possession for more than twelve years. *Eusachordas Vandravandas v. Parbatibai* (1899), I. L. R., 23 Bom., 725, followed. *Lachham Kunwar v. Manorath Ram* (1893), I. L. R., 22 Calc., 445, distinguished. *Ram Kali v. Kedar Nath* (1892), I. L. R., 14 All., 156, *Hannuman*

2.—*Suit by a Hindu entitled to possession of immovable property on the death of a Hindu female*.—One Hazari Lal died in 1856, possessed of certain immovable property, and leaving a son, Jawahir Lal, and a widow, Channi, surviving him. Jawahir Lal died in 1891, leaving a widow, Tarza, and a daughter, Jhamman Kunwar. After Jawahir Lal's death the widows, Channi and Tarza, divided the property between them, and Channi's share, after passing through the hands of Chandan, the daughter of Hazari Lal, came into the possession of

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Art. 141—concluded.**

das Vandravandas v. Parbatibai (1899), I. L. R., 23 Bom., 725, *Ram Kali v. Kedar Nath*

Shama Charan (1897), I. L. R., 20 All., 42, referred to. *JHAMMAN KUNWAR v. TILOKI* (1903)

[I. L. R., 25 All., 435]

—Art. 142—

See ante, ss. ■ AND 28 AND SCH. II, ARTS 120, 142 AND 141.

See DOCUMENT.

[I. L. R., 80 Calc., 483]

—Art. 144—

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|-----------------------------|-----|
| 1. IMMOVABLE PROPERTY . . . | 642 |
| 2 ADVERSE POSSESSION . . . | 643 |

See ante, ss 23 AND 28 AND SCH II, ARTS. 120, 142 AND 144

See ante, Sch. II—

ART 10; . I. L. R., 24 All., 17

ARTS 119, 118 AND 141;

ARTS 120 AND 141;

ARTS 131 AND 141;

ARTS 136 TO 138 AND 144.

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R., 27 Bom., 615

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION

[I. L. R., 25 Bom., 382]

1. IMMOVABLE PROPERTY.

1.—*Hindu Law—Widow's estate—Alienation by widow—Subsequent adoption—Right of adopted son to claim property alienated—Limitation*.—Where a Hindu widow alienates part of the immovable property belonging to her husband's estate, and then adopts a son, the son cannot sue to

LIMITATION ACT, 1877—continued.

Schedule II—continued.

—Art. 144—continued.

1. IMMOVABLE PROPERTY—concluded.

period for the period of limitation is the date of the adoption. *BAZARANULU v. KRISTANNA* (1902)

[I. L. R., 28 Mad., 143]

2. ADVERSE POSSESSION.

2.—Symbolical possession—Effect of symbolical possession as between a mortgagor and mortgagee.

other, symbolical possession is as good as actual possession to give the (judgment-creditor's) purchaser

3.—Mortgage—Redemption—Adverse possession as against mortgagor—Possession obtained under an agreement with mortgagee—Notice to mortgagor of such possession.—The plaintiff filed this suit to redeem a mortgage, with possession of certain land, dated 18th October, 1866. The plaintiffs were the daughters and grandson of the mortgagor Khutubsha (the widow of one Kundi Aga). The first defendant was the grandson and heir of the mortgagee (Nagesh Rao). The second and third defendants were nephews of Kundi Aga. They denied that the plaintiff, being a female, had any right to the property, and they alleged that they themselves had been in possession since 1865 under an agreement with Nagesh Rao, the mortgagee, and they contended that in 1885 the heirs of the mortgagor, and had entered upon the land. The mortgagee thereupon filed a suit against them under s. 39 of the Dekkhan Agriculturists' Relief Act (XVII of 1879), which, however, was settled by an agreement before the court.

the suit was barred by limitation under

LIMITATION ACT, 1877—continued.

Schedule II—continued.

—Art. 144—continued.

2. ADVERSE POSSESSION—continued.

Art. 144 of Sch II to the Limitation Act (XV of 1877), inasmuch as defendants 2 and 3 had been in adverse possession for more than twelve years. On appeal to the High Court: *Held* (reversing the decree of the lower Court, and remanding the case) that the suit was not barred. The possession of the defendants was not adverse to the plaintiffs, inasmuch as there was no notice or knowledge, or circumstance that could have given notice or knowledge to the plaintiffs.

4.—Suit to recover land—Claim that defendants were holding over as yearly tenants on expiration of lease—Previous suit on another lease—Claim by tenants as permanent lessees—Dismissal of suit, except as to rent—Payment of rent since—Limitation.

the present defendants Nos. 4 to 7 that he was a permanent tenant at a fixed rent. That suit was dismissed on the ground that the defendants were

trespassers claiming a permanent right of tenancy. The payment of rent under the decree in the suit of 1881, and subsequently at the same rate, could be construed only, so far as the defendants were concerned, as payment by them of the rent admitted by them to be due as permanent tenants, and not as a

been determined, and such adverse possession had continued down to the date of the present suit, namely, 1899.

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Art. 144—concluded****2 ADVERSE POSSESSION—concluded.**

5.—Arts 144 and 139—Landlord and tenant—Ejectment—Plea by tenant of adverse possession.—The plaintiff sued to recover certain land, alleging that the defendant was in occupation as his tenant. The defendant pleaded adverse possession, and contended that the suit was barred by limitation. The plaintiff proved that up to 1879 the defendant admitted the plaintiff's ownership of the land. The two lower Courts found that the land was the plaintiff's, but held that the suit was barred. *Held* (reversing the decree) that, the defendant having admitted the plaintiff's ownership up to 1879, it lay upon him to show when the alleged adverse possession under Art. 144 commenced, or under Art 139, when the tenancy terminated. As the land was shown to

entitled to remove the superstructure of houses which he had erected on the land *TALSHIBHAI NARAYANHAI v. RANCHHOD GORAE* (1903)

[I. L. R., 28 Bom., 442]

—Art. 145—

See ante, ARTS. 48, 49 AND 145

—Deposit or loan of Government securities—Limitation Act, Sch. II, Arts 59, 60—Art 145,

ADMINISTRATOR-GENERAL OF BENGAL (1903)

[7 C. W. N., 476]

—Art. 148A—

See PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE

[I. L. R., 25 Mad., 635]

—Art. 147—

1.—Transfer of Property Act (IV of 1932), s 59 (c)—“English mortgage”—Covenant for reconveyance not limited to time stipulated for

bound himself to repay same. A deed of mortgage recited that the mortgagors “hereby mortgage and assign to the mortgagee” the mortgaged property. *Semble* that (though it was doubtful if such an assignment was really an absolute one) the assignment was sufficient to fulfil the second requisite of an

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Art. 147—concluded.**

“English mortgage”

whether the prayer in the plaint is for foreclosure alone, or is coupled with a prayer in the alternative for sale in lieu of a decree for foreclosure *Ramachandra Rayaguru v. Modhu Padhi, I. L. R., 21 Mad. 326*, and *Girwar Singh v. Thakur Narain Singh, I. L. R., 14 Calo. 730*, dissented from. *NARAYANA AYYAR v. VENKATARAMANA AYYAR (F B, 1902)* [I. L. R., 25 Mad., 220]

2.—Mortgage by decree-holder out of possession—Decree for possession barred by limitation—Title of mortgagee—Adverse possession—M, holding

but without impleading *L K* and *M K*, who were in possession adversely to *M*, and got a decree for sale. *M* meanwhile allowed his decree for possession to become barred by limitation. *L K* and *M K* mort-

—Art. 148—

—Mortgage—Co-mortgagors—Redemption of entire mortgage by one co-mortgagor, who obtains possession of whole property—Subsequent suit against him by other co-mortgagors for their share of the property—Plea of adverse possession—Co-mortgagor who pays off entire mortgage has a charge on the property.—In 1872, Vinayak and Ganesh, co-owners of the land in question, mortgaged it for Rs300. In 18-2, in a suit brought by the mortgagee, a consent decree was passed, ordering redemption on payment by the mortgagors of Rs400.

LIMITATION ACT, 1877—continued.

Schedule II—continued.

—Arts. 178 and 179—continued.

4.—Decree for sale of hypothecated property on a certain date in default of payment—Order for

execution of the decree or to take some step in aid of execution of the decree had been made Art. 179 is not exhaustive of applications for execution of decrees. There are cases to which Art. 178 may apply. A decree which directs the sale of mortgaged property in default of payment of the mortgage money declared due on or before the date fixed in the decree is not, within the meaning of paragraph 6, column 3, of Art. 179, a decree made at a personal application will run paragraph 1, if from the date thereof, or from a future date, under paragraph 6, if payment can be enforced under the decree only on or after such future date fixed in the decree. Neither paragraph 1 nor paragraph 6 can apply to

LIMITATION ACT, 1877—continued.

Schedule II—continued.

—Arts. 178 and 179—concluded.

237; *Thakur Das v. Shadi Lal*, I. L. R., 8 All., 56; *Ali Ahmad v. Naziran Bibi*, I. L. R., 24 All., 542; and *Ashrafuddin Ahmed v. Bepin Behari Mullick*, I. L. R., 30 Calc., 407, approved and followed. All applications for the execution of a decree for sale of mortgaged property are not governed by Art. 178. Observations as to when Art. 179 will be applicable. The true criterion in determining whether Art. 179 or Art. 178 applies to a particular application is to ascertain whether any one of the six points of time specified in col. 3 of Art. 179 is applicable to it, and if none of them is applicable, it is only then that Art. 178 will apply. Under the Limitation Act of 1877, an application cannot be made merely for the purpose of signifying the decree-holder's intention to keep the decree in force. *BUNGIAH GOUNDEN AND CO. v. NARAYANA ROW* (1903) [I. L. R., 28 Mad., 780]

—Art. 178—

1. LAW APPLICABLE TO APPLICATION FOR EXECUTION	Col. 651
2. PERIOD FROM WHICH LIMITATION RUNS—	
(a) CONTINUOUS PROCEEDINGS	"
(b) WHERE THERE HAS BEEN AN APPEAL	652
(c) WHERE THERE HAS BEEN A REVIEW	"
(d) CLAUSE 4	653
3. NATURE OF APPLICATION—	
(a) GENERALLY	"
(b) IRREGULAR AND DEFECTIVE APPLICATIONS	"
4. STEP IN AID OF EXECUTION—	
(a) GENERALLY	654
(b) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER	655
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6. ORDER FOR PAYMENT AT SPECIFIED DATES	"

See ante, ARTS. 173 AND 179.

See *BENGAL TENANCY ACT*, SCH. II, ART. 6. . . . 5 C. W. N., 783

See *INUNCTION—DISOBEDIENCE OF ORDER FOR INUNCTION* I. L. R., 23 All., 485

—Joint decrees—joint decree-holders—

See ante, ■ 7 AND 8 AND SCH. II, ART. 179.

LIMITATION ACT, 1877—continued.

Schedule II—continued.

—Art. 179—continued.

I. LAW APPLICABLE TO APPLICATION FOR EXECUTION.

1.—*Bengal Tenancy Act (VIII of 1885), Sch. III, Art. 6*—Whether an application for execution of a decree for a sum not exceeding ₹500, obtained by a co-sharer landlord for his share of the rent, is governed by the special provisions of that Act, or by the Limitation Act, 1877.

2.—*Mortgage—Execution of decree, application for—Pleading limitation in appeal*.—In an application for execution of a mortgage decree by a prior mortgagee, a subsequent mortgagee as a judgment-debtor.

[I. L. R., 30 Calc., 781]

2. PERIOD, FROM WHICH LIMITATION RUNS.

(a) CONTINUOUS PROCEEDINGS.

3.—*Application for execution—Non-payment of process fees—Pendency of appeal—Stay of execution*.—The present application for execution of decree was made on the 16th June, 1897. The previous application had been made on the 24th January, 1893. On the 29th May following, the decree-holder was in the mode of the application and

to the High Court, and, on the 4th July, the Court ordered that the records be sent up to the High Court, and that the proceedings be adjourned sine die.

proceedings. DRUKIRAM SRIMASTI v. JOGENDRA CHUNDER SEN (1900) . . . 5 C. W. N., 347

LIMITATION ACT, 1877—continued.

Schedule II—continued.

—Art. 179—continued.

2. PERIOD FROM WHICH LIMITATION RUNS—continued.

(b) WHERE THERE HAS BEEN AN APPEAL.

4.—*Execution of decree—Injunction*.—The decree-holder obtained a decree for rent on the 12th January, 1892, and made an application for execution on the 10th March, 1892, which was dismissed on the ground of informality on the 30th June, 1892. On the 1st July, 1893, a temporary injunction was issued, restraining the decree-holder from executing the decree pending the decision of a suit brought by the judgment-debtor, in which it was *inter alia* prayed that the decree which had been executed should be set aside. The suit was decreed by the first Court, but on appeal it was dismissed, and the injunction was discharged on the 20th May, 1897. Held that the application, dated the 18th May, 1900, for execution of the rent-decree, was barred; and that the decree-holder was not entitled to a fresh starting point from the 20th May, 1897. SARUP GANJAN SINGH BHUYAN v. WATSON (1901) . . . 6 C. W. N., 785

5.—*Commencement of period of limitation for application to execute portion of decree not appealed against, where portion has been appealed against—Commencement of period of limitation*

appealed against and a portion has not, the period of limitation for an application to execute the portion not appealed against runs from the date of the original decree. In the case of a decree for the payment of money or the delivery of property, the period of limitation for an application to execute a portion of the decree which has not been appealed

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MAL (F.B., 1902) . . . I. L. R., 28 All., 66

(c) WHERE THERE HAS BEEN A REVIEW.

6.—*Civil Procedure Code (Act XIV of 1882), s. 206—Limitation Act, Sch. II, Art. 179 (3)*.—A decree was passed on 31st December, 1892, and no appeal was presented by either party therefrom.

On the 1st July, 1893, the decree-holder applied for amendment of the decree, and on 1st July, 1893, the decree was amended. On its being contended that the application was barred by limitation: Held that it was not barred. The order passed by the Court, determining the amount of costs, must be treated as a continuation or completion of the judgment, and the amendment made

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Art 179—continued.****2. PERIOD FROM WHICH LIMITATION RUNS—concluded.****(c) WHERE THERE HAS BEEN A REVIEW—concluded.****(d) CLAUSE 4.**

7.—The time from which limitation runs under Act is

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1, 650;

Sarat Kumari Dassi v. Jagat Chandra Roy
(1897), 1 C. W. N., 260, followed. *TROTLOCKY*
NATH BOSE v. JYOTI PROKASH NANDI (1903)

[I. L. R., 30 Calc., 781]

3. NATURE OF APPLICATION.**(a) GENERALLY.**

8.—*Limitation Act (XV of 1877), Sch. II, Art 179 (d)—Execution—Payment of dhatta—No fresh starting point—An application for execution of a decree was made and granted on the 4th Novem-*

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Art. 179—continued.****3. NATURE OF APPLICATION—concluded.****(b) IRREGULAR AND DEFECTIVE APPLICATIONS—concluded.**

with law, within the meaning of Art 179 of the second Schedule to the Indian Limitation Act, 1877. *Gopal Chunder Manna v. Gosain Das Koley* (1898), 1 L. R., 25 Calc., 594, followed. *KALKA DUBE v. BISHESWAR PATAK* (1901)

[I. L. R., 23 All., 162]

general attorney, decree-holder using at the time within the jurisdiction of the Court.—Held that an application in execution of a decree was not an application "in accordance with law," within the

limits of the jurisdiction of the Court executing the decree. *MURARI LAL v. UMRAO SINGH* (1901)

[I. L. R., 23 All., 499]

4. STEP IN AID OF EXECUTION.**(a) GENERALLY.**

12.—*Civil Procedure Code (Act XIX of 1852), ss 235, 274 and 297—Step in aid of execution—Failure by purchaser to secure possession of property purchased in execution—Execution incomplete—A decree was passed in favour of the plaintiff in a*

CHETTIAR v. KANNAMMAL (1900)

[I. L. R., 24 Mad., 185]

13.—*Application for execution—Application to take a step in aid of execution—Distinction—On 4th November, 1895, a decree-holder applied to the Court for the attachment of a sum of money belonging to the judgment-debtor, but which was in the hands*

(b) IRREGULAR AND DEFECTIVE APPLICATIONS.

10.—*Execution of decree—Held that an application for execution of a decree, which was defective*

LIMITATION ACT, 1877—continued.

Schedule II—continued.

—Art. 178—continued.

4. STEP IN AID OF EXECUTION—continued.

(a) GENERALLY—concluded.

of a Government Department. There was no prayer in the petition that the money should be paid to the petitioner. An order, purporting to be made under s. 272 of the Code of Civil Procedure, was made on 19th November, 1895, requesting the Department to remit the amount to the Court. On 29th April, 1898, the Treasury Deputy Collector informed the Court that there was a balance due to the judgment-debtor. On 12th December, 1898, the decree-holder petitioned the Court, under ss. 263 and 272 of the

Limitation Act was not applicable to the case. *VEDHATA-
RAMANAMMA v. PURUSHOTTAM* (1930)

[I. L. R., 24 Mad, 188

(b) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER.

14.—Execution of decree—Act XI of 1877

the decree-holder has the some obstacle which the decree-holder has to remove before he can get satisfaction of his decree; and where, it may be after an interval of three years, having removed that obstacle, he returns to the Court and prays

the decree-holder himself has acted dilatorily, and thereby been the cause of delay in the proceedings for execution. *Paras Ram v. Gardner* (1877), I. L. R., 1 All., 353; *Raghubans Gir v. Sheosaron Gir* (1882), I. L. R., 6 All., 243; *Booboo Pyaroo*

15.—Application in execution more than three years after previous application—Omission on part of judgment-debtor to set up bar by limitation—Adjudication on application—Subsequent application in execution—Objection on ground that previous

LIMITATION ACT, 1877—continued.

Schedule II—continued.

—Art. 178—continued.

4. STEP IN AID OF EXECUTION—continued.

(b) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—continued.

application was barred—*Res judicata*.—A decree was obtained on 16th March, 1893, and a petition in

An order was passed on the petition, for the issue of a warrant for the arrest of the defendant, and the warrant was duly issued. Within three years of that petition the present application in execution was made, when it was objected that, as the application

it was Court in to determine whether the decree was barred, and had made an order in execution of the decree, it must be

16.—Decree directing execution of muchalka, and costs—Recovery of costs in execution—Application to enforce execution of muchalka more than three years previously—Subsequent application for

Distinction now (namely,

LIMITATION ACT, 1877—continued.

Schedule II—continued.

—Art. 179—continued.

4. STEP IN AID OF EXECUTION—continued.

(b) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—concluded.

17.—*Transfer of Property Act (IV of 1882), ss. 59—Decree for sale under s. 59—No order absolute under s. 59—Application by decree-holder for sale under Civil Procedure Code—Order as asked—No further applications in execution for more than three years—Then, application for order absolute, under s. 59—Bar by previous order.—A decree for sale of mortgaged property was passed on 30th August, 1895, under s. 59 of the Transfer of Property Act. No order absolute for sale was asked for or made under s. 59 of the Transfer of Property Act. On 30th September, 1896, the decree-holder applied to the Court, under ss 296 and 297 of the Code of Civil Procedure, for an order directing the sale of the mortgaged property; and an order was passed accordingly. This application was subsequently dismissed for failure to pay the expenses. On 10th October, 1900, the decree-holder applied for an order absolute for sale.*

Inasmuch as his application was not one for execution, it was not barred by limitation under Art. 179 of Sch. II to the Limitation Act. Held that the order was valid.

[I. L. R., 24 Mad., 695]

(c) MISCELLANEOUS ACTS OF DECREE-HOLDER

18.—*Seal warrant—Application for, in the Presidency Small Cause Court—Whether such an application is an application in accordance with law for execution or to take steps in aid of execution.*

19.—*Application to postpone sale—Opposition to application of judgment-debtor.—An application by the decree-holder to postpone a sale, not with a view to enable him to bring the property to sale more advantageously for him, but upon other grounds, is not an application to take some step in aid of execution. Abdul Hossein v. Fazlan (1922).*

LIMITATION ACT, 1877—continued.

Schedule II—continued.

—Art. 179—continued.

4. STEP IN AID OF EXECUTION—concluded.

(c) MISCELLANEOUS ACTS OF DECREE-HOLDER—concluded.

I. L. R., 20 Cal., 255, followed. The decree-holder's opposition, to an application of the judgment-debtor to sell the properties in an order different from that to which they have already been directed to be sold, is not an application to take some step in aid of execution.

[I. L. R., 20 Cal., 255]

5. NOTICE OF EXECUTION.

and not the date when the Court passes the order for issuing the notice. KADARESSUR SEN BASO v. MOHAMM CHANDRA CHAKRAVARTI (1902) . 6 C. W. N., 656

21.—*Art. 179, cl. (5)—Civil Procedure Code (Act XIV of 1882), s. 243—Decree—Execution—Notice to show cause why decree should not be executed—Date of the order—Step in aid of execution.—Where a notice to show cause why a decree should not be executed is issued, the date of the order for execution is the date when the Court passes the order for issuing the notice.*

6. ORDER FOR PAYMENT AT SPECIFIED DATES

22.—*Installments—Installment decree—Default in payment of installments—Subsequent payment and acceptance of overdue installments—Waiver.—A decree obtained on the 27th June, 1897, by a mortgagee against his mortgagor, directed that the sum of Rs. 1,050 should be paid by yearly installments of Rs. 55, the installments to be paid in the month of April in each year. It further provided that if the mortgagor failed to pay any installment, the whole sum should become due.*

the decree, but he paid them, and they were accepted by the plaintiff, in the months of May, 1897, and May, 1898, respectively. He also paid subsequent installments, and up to 1899 no single installment remained unpaid at the date at which that immediately succeeding it became due. But he

LIMITATION ACT, 1877—continued.**Schedule II—continued.****—Art. 178—concluded.****6. ORDER FOR PAYMENT AT SPECIFIED DATES—concluded.**

to execution arose in 1897 under the terms of the decree. The lower Appeal Court held that the

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acceptance of instalments in this case subsequently in 1892, the parties had been remitted to the same position as they would have been in if no default had then occurred, and that on the subsequent default in 1897 the plaintiff's right to execution arose, and that consequently his application in 1899 was in time. *Per JENKINS, C.J.*—The true view appears to me to be that, though there may be a failure to pay punctually under an instalment decree, still the subsequent conduct of the parties may preclude either of them from afterwards asserting that payment was not made regularly and in satisfaction of the obligation under the decree. This view is

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the payment was a regular satisfaction of the obligation, and the parties have acted on that belief, neither can afterwards deny the regularity. It is a fundamental proposition of law that payment and acceptance of overdue instalments cannot by themselves prove a waiver. The point is one to be determined on the circumstances of each case. *Dulook v. Chagon (1877)*, 1 L. R., 2 Bom., 356, and *Baleji v. Sahharan (1892)*, 1 L. R., 17 Bom., 555, commented on. *KASHIRAM v. PASDV (P.B.) (1902)*, 1 L. R., 27 Bom., 1

—Art. 180—

1.—Limitation—Expiration of period for presenting execution petition while Court closed.—Presentation of defective petition on day of re-opening.—Return for amendment.—Re-presentation.—The period of twelve years from the date of a decree expired when the Court was closed. The decree-holder presented a petition for execution of the decree on the first day on which the Court re-opened, but the petition was found to be defective, as it was not verified, and was otherwise defective. The Court returned the petition, under a 245 of the Code of Civil Procedure, so that it might be amended. The

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appeal in the lower Appellate Court, but before that Court delivered judgment. *Held* that the judgment should be read as from the date when the Court reserved judgment, and that it was not incompetent to the son of the decree-holder to prefer an appeal

LIMITATION ACT, 1877—concluded.**Schedule II—concluded.****—Art. 180—concluded.**

to the High Court by reason of the fact that he had not been brought on the record before the judgment of the lower Appellate Court was delivered. *Held also* that it was not incumbent on the appellant to apply for execution to the Court which passed the decree. He had adopted the proper procedure in applying to the High Court to be brought on the record; and, an order having been passed, bringing him on the record, he was competent to present the appeal. *BAHITSAYIA THATHA CHARAN v. VIKARASA TAWKIR (1902)*, 1 L. R., 28 Mad., 101

2.—Revivor—Execution of decree—Notice—Civil Procedure Code (Act XIV of 1882), ss. 232, 249.—Where a notice was issued, under ss. 232 and 249 of the Civil Procedure Code, for the execution of a decree, and further proceedings were dropped until after the period allowed by limitation, computed from the date of such decree: *Held* that, there being no order made by the Court, such notice alone did not operate as a revivor of the decree, within the meaning of Art. 180, Sch. II, of the Limitation Act. *See also* *Chander Nath Mullick v. Nilakant Bawerjee (1882)*, 1 L. R., 3 Cal., 690; *Raj Keshan Mookerjee v. Radha Madhab Haldar (1874)*, 21 W. R., C. R., 849; *Ram Narain Singh v. Maktab Bibi (1880)*, 1 L. R., 2 All., 528; and *Rajah Enayat Hossein v. Girdharas Lall (1859)*,

[1 L. R., 80 Cal., 879;
a.c., 7 C. W. N., 793

LIS PENDENS.**See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.**

[1 L. R., 25 Mad., 408

1.—Execution of decree—Sale in execution pending an appeal in a suit under a 253 of the Code of Civil Procedure—Title of auction-purchaser subject to the result of the appeal.—*J* brought a suit, under a 253 of the Code of Civil Procedure, for a declaration that certain property was the property of the plaintiff, and not liable to be sold in execution of a decree against a third person. Her suit was dismissed by the Court of first instance. She thereupon appealed; but, while her appeal was pending, the decree-holder caused the property, the subject of the suit, to be sold, and it was purchased by *S P*, who subsequently transferred a portion of it to *J L*. On appeal *J*'s claim was decreed, and her title to the property established. Some considerable time after the passing of the decrees in appeal, *J* brought a suit against *J L* and *S P* for recovery of the property purchased, as above mentioned, by *S P* at auction sale. *Held* that the doctrine of *lis pendens* applied, and that the title taken by *J L* was subject to the result of *J*'s appeal, which was pending at the time when the property was brought to sale. *Chander Nath Mullick v. Nilakant Bawerjee (1882)*, 1 L. R., 3 Cal., 690; *Raj Keshan Mookerjee v. Radha Madhab Haldar (1874)*, 21 W. R., C. R., 849; *Ram Narain Singh v. Maktab Bibi (1880)*, 1 L. R., 2 All., 528; and *Rajah Enayat Hossein v. Girdharas Lall (1859)*,

LIS PENDENS—concluded.

12 Moo. I. A. 366, referred to. **SUKHDEO PRASAD v. JAMNA** (1900) . . . I. L. R., 23 All., 60

3.—Act IV of 1882 (Transfer of Property Act), ss 58, 59—Decree for sale—Decree assigned before the passing of an order absolute—Appeal—Assignee not made a party to appeal until after expiry of limitation—Civil Procedure Code, s. 372.—A decree under s. 58 of the Transfer of Property Act, 1882, being only a decree nisi and not a final decree, the suit in which such a decree is passed does not terminate until an order absolute is made under s. 59. Where, therefore, such a decree is assigned before any order absolute is made, the assignee takes subject to all the liabilities resulting from the application of the doctrine of *lis pendens*. Such an assignee, for example, may properly be made a party, under s. 372 of the Code of Civil Procedure, to an appeal from the decree preferred against his assignors, and it is not competent to him to raise any defence, such as a plea of limitation, to the appeal, which could not be raised by his assignors. **CHUNNI LAL v. ABDUL ALI KHAN** (1901)

[I. L. R., 23 All., 331]

6. **CHUNNILAL LALCHAND** (1902)

[I. L. R., 27 Bom., 286]

LOAN.

See **HINDU LAW—**

GUARDIAN;

[I. L. R., 28 Bom., 433]

JOINT FAMILY—DEBTS, AND JOINT FAMILY BUSINESS.

[7 C. W. N., 725]

—repayment of, by instalments—

See **TRANSFER OF PROPERTY ACT**, s. 83.

[I. L. R., 24 All., 461]

—to executor—

See **EXECUTOR**, . . . 7 C. W. N., 104

LOCAL INQUIRY.

See **POSSESSION—ORDER OF CRIMINAL COURT AS TO—LOCAL INQUIRY.**

LOCAL INVESTIGATION.

See **COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF, AND PRELIMINARIES TO, DISMISSAL.**

[6 C. W. N., 295]

LOCAL USAGE.

See **CUSTOM.**

LUNATIC.

See **INSANITY.**

LUNATIC—concluded.

1.—Civil Procedure Code (Act XIV of 1882), s. 463—Suit against a lunatic not so adjudged—Lunacy (District Courts) Act (XXXV of 1858), ss. 2, 23—Appointment by Court of guardian *ad litem* to lunatic—Practice.—The plaintiff in a suit against several defendants described the first defendant (a widow, and not a minor) as of

did it appear that the Court of first instance had satisfied itself that first defendant was, in fact, a lunatic, or that it had approved of the guardian, named and appointed by the plaintiff, as a fit and proper person. The suit was only contested by the second defendant. By s. 463 of the Code of Civil Procedure the provisions contained in ss 440 to 462 (which relate to the conduct of suits by and against minors) are directed to apply, *mutatis mutandis*, in the case of persons of unsound mind adjudged to be so under Act XXXV of 1858 or under any other law for the time being in force. The contention having been raised that the suit was bad and must be

the maintenance of suits against persons of unsound mind who have not been so adjudged under the Act, the Court should appoint a fit and proper person as guardian *ad litem*, upon its being established that the first defendant was, in fact, of unsound mind. **KADALA REDDI v. NARISI** (1901)

[I. L. R., 24 Mad., 504]

2.—Act XXXV of 1858 (Lunacy), ss. 9, 10 and 11, discussed and explained. **MURUND KORN v. DEPUTY COMMISSIONER OF CHOTA NAGPUR** (1902)

[I. L. R., 29 Calc., 638]

3.—Management of lunatic's estate—Custody of lunatic's person—Lunacy Act (XXXV of 1858), ss. 7, 9—Under s. 9 of the Lunacy Act (XXXV of 1858), it is incumbent upon a District Judge to appoint a manager of the estate of a person adjudged to be of unsound mind. If a lunatic be well taken care of by his own people at home, he should not be forced to go to lunatic asylum, there being apparently no provision in the Lunacy Act authorising a District Judge to send such a person to the asylum. **In re JOGA KOER** (1903)

[I. L. R., 30 Calc., 873]

M**MADRAS ABRARI ACT (MAD. ACT I OF 1886).**

—Restriction prohibiting licensed vendor of toddy from having interest in the sale of arrack—Partnership agreement between licensed vendor of toddy and licensed vendor of arrack—Illegality—Void agreement.—A held a license for the sale of toddy, while B held a license for the sale of arrack. A entered into an agreement of partnership with B

MADRAS ABKARI ACT (MAD. ACT I OF 1886)—continued.

in the business of vending arrack and toddy. At the time when this agreement was entered into, a rule framed under the Abkari Act prohibited a person having a license for the sale of toddy from being interested in the sale of arrack, or a person having a license for the sale of arrack from being interested in the sale of toddy. *A* subsequently sued *B* for dissolution of partnership and for the recovery of money due to him in respect of the partnership. Held that

business cannot be carried on by a partner who does not hold such a license. *MASTUDAMUTHU PILLAI v. RANGASAMI MOOPPAN* (1901)

[L. L. R., 24 Mad., 401]

—s. 24, cl.(c)—

—*License to sell arrack issued under the Act—Rule contained in license imposing duty on licensee-holder to obtain Collector's permission to sub-let—Agreement to sub-let and sell arrack to sub-lessee*

arrack in plaintiff's licensed shop, and that plaintiff should supply the liquor to be sold. Rule 21 of plaintiff's license imposed a duty on plaintiff to obtain the sanction of the Collector in case he should sub-let. Neither plaintiff nor defendants obtained such sanction. On a suit being filed by plaintiff for a sum of money due under the agreement: Held that the agreement was illegal, and that plaintiff could not sue on it. *THIRU PAKUTIASU v. BRENNUDY* (1902) . L. L. R., 26 Mad., 430

—s. 34—

—*Power of officer in one Circle to arrest offenders in another.*—An officer of the Salt and Abkari Department, belonging to Circle A, received certain information and entered Circle B, and, under s. 34 of the Madras Abkari Act, arrested an offender in the latter Circle. The Magistrate who, in due course, tried the offender, held that the officer's

MADRAS ABKARI ACT (MAD. ACT I OF 1886)—concluded.

—s. 34—concluded.

guilty of the offence with which he was charged. *EMPERON v. RAVALU KESIGADU* (1902)

[L. L. R., 26 Mad., 124]

—s. 55, cl. (g)—

—*"Wash" fit for distillation—"Materials" for manufacturing liquor.*—A liquid mixture known as "wash," consisting of jaggery and babool bark, and proved to be fit for distillation, constitutes "materials" for the purpose of manufacturing liquor, within the meaning of s. 55 (g) of the Abkari Act. *QUEEN-EMPRESS v. GANGAYYA* (1901)

[L. L. R., 24 Mad., 417]

MADRAS ACT—

—1864—II—

See MADRAS REVENUE RECOVERY ACT.

—1865—VIII—

See MADRAS RENT RECOVERY ACT.

—1876—I—

See MADRAS LAND-REVENUE AMENDMENT ACT.

—1892—V—

See MADRAS FOREST ACT.

—1884—I—

See MADRAS CITY MUNICIPAL ACT.

—IV—

See MADRAS DISTRICT MUNICIPALITIES ACT.

—V—

See MADRAS LOCAL BOARDS ACT.

—1886—I—

See MADRAS ABKARI ACT.

—1899—I—

See MADRAS VILLAGE COURTS ACT.

—1891—I—

See MADRAS GENERAL CLAUSES ACT.

—1895—III—

See MADRAS HEREDITARY VILLAGE OFFICES ACT.

—1897—III—

See MADRAS DISTRICT MUNICIPALITIES (AMENDMENT) ACT.

MADRAS CITY CIVIL COURT ACT (VII OF 1893).

—s. 3—

—*Jurisdiction—Suit for "breach of promise of marriage"—Contract of marriage between intended*

MADRAS CITY CIVIL COURT ACT (VII OF 1882)—concluded.

bridegroom and parent of intended bride—Cognizable by Small Cause Court—Presidency Small Cause Courts Act (XV of 1882), s. 19 (g)—The phrase "breach of promise of marriage," which occurs in Art. (g) of s. 19 of the Presidency Small Cause Courts Act, has reference to the action as understood in English law, that is, between the parties who contemplate contracting the marriage, and not between an intended bridegroom and the

compensation for breach of promise of marriage. A suit was filed in the City Civil Court for compensation for breach of promise of marriage; but the

MUHAMMAD ASHRAF HUSSAIN SAKES v. MUHAMMAD ALI (1901) I. L. R., 24 Mad., 652

MADRAS CITY MUNICIPAL ACT (MAD. ACT I OF 1884)—

See DEFAMATION.

[I. L. R., 26 Mad., 43

—s. 341—

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY, OR OTHERWISE

[I. L. R., 25 Mad., 15

—Liability of Government under taxing Acts,

MADRAS CITY MUNICIPAL ACT (MAD. ACT I OF 1884)—concluded.

—ss. 392, 433 and 458—concluded.

from burning ground—Actionable nuisance—Public body—Protection—Limitation—Continuing nuisance.—By s. 392 of the City of Madras Municipal Act, 1884, the Municipal Commissioners "shall . . . provide a sufficient number of convenient and fitting places for burial and burning grounds, either within or without the limits of the City, and may acquire land for this purpose;" and s. 458 gives a right of action to any person aggrieved by the failure of the Commissioners to perform a duty imposed on them by the Act. Plaintiff was

value. He accordingly sued for an injunction restraining the defendants from using the land acquired by them as a burial and burning ground, and for damages. No negligence was alleged or shown regarding the manner in which the burial ground had been used. There was some evidence that the burning ground was to some extent a source of nuisance to anyone who occupied plaintiff's premises, and that the market value of the premises had been depreciated by the opening of the burial ground. Held that no actionable nuisance had

damage from the establishment of a burning and burial ground does not show that the site selected is not "convenient and fitting." The words "within or without the limits of the City" must be read *secundum subjectam materiam*, and with reference to the requirements of the community in connection with the disposal of corpses, and the general necessities of the case. By s. 433 of the City of Madras Municipal Act, the period of limitation for the commencement of suits against the Commissioners in respect of anything done in pursuance of the powers given by the Act is fixed at six months. *Scilicet* that plaintiff's cause of action, if any, arose when the site began to be used as a burial ground, namely in 1896, and that the claim was barred by limitation, under both s. 433 and the general law. MUHAMMAD MOHIDEY SAIF v. MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS (1901)

[I. L. R., 25 Mad., 118

MADRAS CIVIL COURTS ACT (III OF 1873).

—s. 16—

See MAHOMEDAN LAW—Gift.

[I. L. R., 24 Mad., 513

—ss. 392, 433 and 458—

—Nuisance—Opening of burial and burning ground—"Convenient and fitting place"—Smoke

MADRAS CIVIL COURTS ACT (III OF 1873)—concluded.

—s. 17—

See DISTRICT JUDGE, JURISDICTION OF.
[I. L. R., 28 Mad., 595]

MADRAS DISTRICT MUNICIPALITIES ACT (MAD. ACT IV OF 1884).

—s. II (27)—

See PUBLIC ROAD, HIGHWAY, STREET OR
THOROUGHFARE.
[I. L. R., 25 Mad., 635]

—ss. 53 and 262—

—Carrying on business within the limits of a municipality—Business conducted by a local agent without power to make contracts on behalf of company—Levy of profession tax—Suit to recover amount paid—Substantial compliance with the provisions of the Act—Maintainability of suit.

money on the company as profession tax, under s. 47 of the Madras District Municipalities Act, 1884;

MUNICIPAL COUNCIL, COCANADA v. STANDARD LIFE ASSURANCE COMPANY (1930)

[I. L. R., 24 Mad., 205]

—s. 53, and Sch. A, proviso 4—

—Person carrying on business as a money-lender—Liability to pay profession tax.—A person who carries on the business of a money-lender, and whose income is less than Rs 30 per mensem, is not chargeable with a tax under s. 53 of the District Municipalities Act (Madras), 1884. MUNICIPAL COUNCIL OF CHIDAMBARAM v. VENKATARAMAYANA PILLAI (1901)

[I. L. R., 24 Mad., 644]

MADRAS DISTRICT MUNICIPALITIES ACT (MAD. ACT IV OF 1884)—continued.

—s. 63—

1.—Sub-s. (2), (3)—Levy of tax—Legality.—By s. 63 (2) of the District Municipalities Act

tions mentioned, a tax levied under sub-s. (3) on all lands within a municipality is a legal tax. QUEEN-EMPRESS v. ALLAN (1900)

[I. L. R., 24 Mad., 195]

2.—Sub-s. (3)—Madras District Municipalities Amendment Act (III of 1897), s. 49—"Lands used solely for agricultural purposes"—Liability to tax.—By sub-s. (3) of s. 63 of the Madras

ALLAN (1901) [I. L. R., 25 Mad., 645]

—s. 262—

See ante, ss. 53 AND 262.

—s. 268—

—Madras Act IV of 1884 (as amended by Madras Act III of 1897), s. 269—Money due as tax, fee,

cannot be convicted and fined under that section. ABDUL AZEEM SAHIB v. CUDDAPAH MUNICIPALITY (1902)

[I. L. R., 28 Mad., 475]

—Sch. A—

See ante, s. 53 AND SCH. A, PROVISIO 4.

—Shopkeeper or trader—District Forest-officer—Depot for sale of forest produce, conducted by

MADRAS DISTRICT MUNICIPALITIES ACT (MAD. ACT IV OF 1884)—concluded.

—Sch. A—concluded.

representative of Government—Liability to taxation.—A District Forest-officer, who, as the representative of Government, is liable to taxation.

FOR INDIA IN COUNCIL (1902)

(I. L. R., 25 Mad., 747)

MADRAS DISTRICT MUNICIPALITIES (AMENDMENT) ACT (MAD. ACT III OF 1897)

—S. 5—

See PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE

(I. L. R., 25 Mad., 635)

—S. 49—

See MADRAS DISTRICT MUNICIPALITIES ACT (MAD. ACT IV OF 1884), s. 63

(I. L. R., 25 Mad., 627)

MADRAS FOREST ACT (MAD. ACT V OF 1882).

—S. 21, cl (a)—“Clearing”—Removal of trees or shrubs—Conviction where no evidence of such removal—Validity—The word “clearing”, as it is used in s. 21 (a) of the (Madras) Forest Act of 1882, means something in the nature of the removal of trees or shrubs. Certain accused were convicted of an offence under the section, but there was no evidence on the part of the prosecution to show that

(I. L. R., 25 Mad., 240)

MADRAS GENERAL CLAUSES ACT (MAD. ACT I OF 1891).

—S. 8—Appellate jurisdiction of High Court in cases instituted under enactments in force at time

MADRAS GENERAL CLAUSES ACT (MAD. ACT I OF 1891)—concluded.

that the Court had jurisdiction. The appeal was from the judgment of a Court exercising original jurisdiction; and the High Court, if Madras Act II of 1894 had not been passed, would have had appellate jurisdiction, by virtue of s. 540 of the Code of Civil Procedure, in suits brought under the said Regulations. In cases where the Court of first instance had jurisdiction to entertain the suit when it was instituted, and the parties had a right of appeal when the suit was instituted, the appellate jurisdiction of the High Court is not affected.

(I. L. R., 24 Mad., 89)

MADRAS HEREDITARY VILLAGE OFFICES ACT (MAD. ACT III OF 1895).

—S. 3 (3)—Village officers—Suit for lands forming emoluments of the office of Ambalam—“Head of the village”—Office in a “proprietary estate”—Office in Inam village—Grant confirmed by Government—Jurisdiction of Civil Court to

(I. L. R., 23 Mad., 480)

MADRAS LAND-REVENUE AMENDMENT ACT (MAD. ACT I OF 1878).

—S. 7—

See LIMITATION—STATUTES OF LIMITATION—MADRAS ACT I OF 1876, s. 7.

MADRAS LOCAL BOARDS ACT (MAD. ACT V OF 1894).

—ss. 57, 64 and 149—Wrongful collection of land cess from inamdar—Suit for its recovery against President, District Board—Maintainability of suit.—A sum of money was collected from an inamdar as land cess under s. 57 of the Madras Local Boards Act, 1894. The amount had been assessed by the Collector of the district under s. 64, collected by him, and subsequently paid to the credit of the District Fund under s. 149 of the said Act. The inamdar filed a suit against the

MADRAS LOCAL BOARDS ACT (MAD. ACT V OF 1884)—concluded.

President of the District Board, to recover the amount, on the ground that it had been illegally collected from him. There was no claim for damages. On its being objected that the suit was wrongly brought against the President of the District Board: *Held* that the suit was not maintainable. The assessment and the collection of which plaintiff complained were not the acts of the defendant, who could not be called upon to make good the amount

MADRAS MUNICIPAL ACTS.

See MADRAS CITY MUNICIPAL ACT.

See MADRAS DISTRICT MUNICIPALITIES ACT.

See MADRAS DISTRICT MUNICIPALITIES (AMENDMENT) ACT.

MADRAS REGULATION.

—1802—III—s. 16, cl. (7)—

See APPEAL—ORDERS.

[I. L. R., 24 Mad., 95]

—XXV—

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND.

[I. L. R., 26 Mad., 252]

—XXVI—

See MADRAS RENT RECOVERY ACT, ss. 3 AND 80 . I. L. R., 26 Mad., 589

—s. 3—

See MADRAS REVENUE RECOVERY ACT, ss. 5, 25 AND 41 . I. L. R., 26 Mad., 521

—1803—II—

—s. 8—

See MADRAS RENT RECOVERY ACT, s. 11 [I. L. R., 26 Mad., 456]

—s. 18—

See LIMITATION—STATUTES OF LIMITATION—MADRAS ACT I OF 1876, s. 7.

[I. L. R., 26 Mad., 389]

—1816—XI—

—s. 10—Confinement of Native Christian in stocks—Legality of order.—By s. 10 of Mad. Reg. XI of 1816, heads of villages are given summary

MADRAS REGULATION—concluded.

—1816—XI—concluded.

punishment," they may be put in the stocks. A person who was a *Mala*, or *Hindu pariah*, by birth, and had become a Christian, and sent to the stocks under that of a weaver, but he, in fact, worked as a coolie. On the being referred to render the stocks under the tenure of two

degrading a punishment. The test is not what is the offender's creed, but what is his caste. *Scoble*, that a person who has changed his creed but continues to belong to his caste may be within the purview of the Regulation if the caste is of the nature therein referred to; but if he abandons his caste he cannot longer be said to "belong to one of the lower castes of the people," and punishment by confinement in the stocks would no longer be legal. *The Queen v. Nabi*, I. L. R., 6 Mad., 247, discussed. *RATTIGADU v. Konda Reddi* (1900) [I. L. R., 24 Mad., 271]

—1823—IV—

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND.

[I. L. R., 26 Mad., 252]

—1828—VIII, s. 3—

See MADRAS RENT RECOVERY ACT, s. 11. [I. L. R., 26 Mad., 456]

MADRAS RENT RECOVERY ACT (MAD. ACT VII OF 1885).

—distraint under—

See PENAL CODE, s. 424

[I. L. R., 25 Mad., 729]

—s. 14—Demand by landholder of an amount in excess of rent actually due by tenant—Non-compliance with demand—Attachment and sale in consequence of non-compliance—Legality.—A landholder made a demand on his tenant for payment of a sum in excess of what was in fact due in respect of rent. The demand was not complied with, and, as a consequence of such non-compliance, the holding was attached and sold. *Held* that, inasmuch as the sale had been held by reason of a demand which was not shown to be correct, it must be set aside. *PICHUVAIYENGAR v. OLIVER* (1902) [I. L. R., 26 Mad., 260]

—ss. 3 and 80—

—Tender of patta and process to recover rent, by holder of jaghir, before registration as jaghir—

MADRAS RENT RECOVERY ACT (MAD. ACT VIII OF 1885)—continued.

—ss. 3 and 80—concluded.

dar—Validity—“Proceedings”—The holder of a jaghir is entitled to tender a patta under the Rent

(F.B., 1903). I. L. R., 28 Mad., 589

—s. 4—

*—Patta containing name of tenant's father and not mentioning tenant—Death of the father before tender of patta—Tender of patta without alteration—Validity—Patta for land was tendered to A, but stood in the name of A's father. It appeared that A's father was really the tenant for the *faisli* in respect of which the patta had been tendered, but had died after the patta had been prepared and signed by the landholder. Held that the tender was legal. SURESH C. RAMASAMI CHETTI (1902)*

[I. L. R., 28 Mad., 363]

—s. 10—

1.—*Purchase at Court sale of former tenant's interest in land—Liability of purchaser for rent, as from date of confirmation of sale.*—Defendant had purchased at a Court sale the interest of a former tenant in certain land in a *samindari*. The sale was confirmed on 31st March, 1900, and possession was given to defendant on 11th May, 1900. The landlord now sued to enforce the acceptance by defendant of patta for *faisli* 1800, being the year commencing on 1st July, 1899, and ending on 30th June, 1900. By the terms of the *muckils* which had been executed by the former tenant, rent was payable in four equal instalments, on 1st October, 1st February, 1st April and 1st May. Held that the defendant was liable for the instalments which fell due subsequently to the confirmation of sale.

Also, that liability for portion of the ORAI AYAR (1901).

I. L. R., 25 Mad., 454

2.—*Suits to enforce acceptance of patta—Necessity for tender of patta after judgment, where patta originally tendered is either upheld*

MADRAS RENT RECOVERY ACT (MAD. ACT VIII OF 1885)—continued.

—s. 10—concluded.

tenant did not accept the same and execute a *muckilika* before the expiration of the said period of ten days. *Court of Wards v. Darmalinga, I. L. R., 8 Mad., 2*, commented on. *SHANMUGA MUDALI v. PALNATI KUPPU CHETTI (F.B., 1902)*

[I. L. R., 25 Mad., 613]

—ss. 10 and 69—

Admission that amount of rent is due

—s. 11—

—Cl. 4—*Sanction by Deputy Collector of enhanced rent—Cancellation of sanction by Collector—Validity—Mad. Reg. II of 1903, s. 9—Mad. Reg. VII of 1893, s. 8—Powers of supervision vested in Collector—Tender of patta within *faisli*—Order sanctioning enhanced rent, passed after termination of *faisli*—Tender by a gener*

by a Reg. order of a Deputy Collector, passed under s. 11, cl. 4, of the Rent Recovery Act, sanctioning an

enhanced at the rate of one rupee per acre. The enhancement was justified on the ground (among others) that the Government had added a corresponding increase to the water-rate and that the Deputy Collector had, under s. 11, cl. 4, of the Rent Recovery Act, sanctioned the enhanced rent. Such an order had, in fact, been passed, but it had been

one rupee per acre. It was held that the Collector had

MADRAS RENT RECOVERY ACT (MAD. ACT VIII OF 1865) —continued.

—s. 11—concluded.

were not bound to accept *pattas* in which an enhanced rate not sanctioned by the Deputy Collector till 29th August was charged. *ZEMINDARI OF NIDAVOLE v. SAGIRAZU KRISHNAM RAO* (1902)

[I. L. R., 28 Mad., 458]

—ss. 15, 17 and 18—

—Statement of place in which distrained property is kept—“The property is with the distrainer”—Sufficiency—Maintainability of suit.—In a suit, instituted under s. 18 of the Rent Recovery Act, to set aside a distraint on the ground that it had been illegally carried out, plaintiff complained that the authority to distrain did not contain the particulars required by s. 15 of the Act. The property, which consisted of some small jewels, was described as being “with the distrainer.” Held that, with regard to property of this description, the statement was sufficient. Whether the failure to state the place where property which has been distrained is kept is a ground for a suit under s. 18 of the Rent Recovery Act to set aside the distraint—*Quare*. *VIRABAGHAVA ATTANAGAR v. KANAGAVALLI AMMAL* (1901)

[I. L. R., 25 Mad., 503]

—s. 20—

—Death of cattle distrained—A landlord distrained cattle, belonging to his tenant, for arrears of rent. The distraint was held, in a suit, to be illegal, the judgment being delivered on 7th September, 1893. Out of 17 animals which were distrained, only 11 were restored to plaintiff, the date of their restoration being the 23rd November, 1898. Of those which were not restored, four died more than thirty days prior to the institution of the suit, one died within thirty days of suit, and one died after the suit had been filed. Upon a summary suit being filed by the tenant to recover the value of the cattle illegally distrained, Held that the cause of action arose on the date of the death of the cattle, and that plaintiff was only entitled to recover the value of one animal. Also, that he would have been entitled to recover the loss sustained by being deprived of the services of the cattle, had he so framed his suit. *JAGANNADHA RAO PANTYU GARU v. NIDAMARTI UMIYAYA* (1902)

[I. L. R., 28 Mad., 183]

—s. 33—

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE.

[I. L. R., 24 Mad., 307]

—s. 38—

See MONEY HAD AND RECEIVED.

[I. L. R., 25 Mad., 548]

—s. 39—

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE

[I. L. R., 24 Mad., 307]

—Practice—Point not taken in plaint or a settlement of issues—Right to raise it on appeal.

MADRAS RENT RECOVERY ACT (MAD. ACT VIII OF 1865) —concluded.

—s. 39—concluded.

Where a plaintiff in a suit to set aside a sale of land fails to take the objection, either in his plaint or at settlement of issues, that the notice of sale prescribed by s. 39 of the Rent Recovery Act had not been served upon him, he should not be allowed to raise it on appeal. *SEBBIY v. RAMASAMI CHETTI* (1902)

I. L. R., 28 Mad., 383

—s. 69—

See ante, ss. 10 and 69.

See REMAND—CASES OF APPEAL AFTER REMAND. I. L. R., 28 Mad., 518

—Delay in presenting appeal—Power of Court to excuse—Limitation—Under s. 69 of the Rent Recovery Act, a Court has no power to excuse delay in presenting an appeal from a judgment from the Court of first instance in a suit by a tenant to set aside a distraint, made by a landlord under the provisions of the Rent Recovery Act (Madras). *HUTAJANGA RAO v. VENKAYYA* (1901)

I. L. R., 24 Mad., 558

—s. 78—

See SMALL CAUSE COURT, MORTGAGE—JURISDICTION—WRONGFUL DISTRAINT.
[I. L. R., 25 Mad., 540]

—Six months from date of cause of action—Illegal attachment by landlord of tenant's property—Retention for more than six months—Continuing wrong—Limitation.—By s. 78 of the Rent Recovery Act (Madras), 1865, a suit may be brought to recover damages in respect of anything wrongfully done under the authority of that Act, provided that it be instituted within six months from the time at which the cause of action arose. A landlord illegally attached goods of his tenant, and detained them for longer than six months. The tenant then sued to recover the goods, and damages for the illegal detention. Held that the claim was not barred, the detention being a continuing wrong. *YAMUNA BAI RANI SAHIBA v. SOLAYYA KATUNDAY* (1901)

I. L. R., 24 Mad., 339

—s. 80—

See ante, ss. 3 and 80.

MADRAS REVENUE RECOVERY ACT (MAD. ACT II OF 1864).

—SUIT based on action of Village officer—See SECRETARY OF STATE.

[I. L. R., 26 Mad., 263]

—s. 2—

See CONTRIBUTION, SUIT FOR—PAYMENT ON JOINT-DEBT BY ONE DEBTOR.

[I. L. R., 26 Mad., 688]

See LAND-REVENUE.

[I. L. R., 26 Mad., 730]

MADRAS REVENUE RECOVERY ACT
(MAD. ACT II OF 1864)—continued.

—ss. 5, 25 and 44—

—*Sale of property of a defaulter for arrears of revenue—Mad Reg. XXXI of 1802, s. 3—Register of transfer—Act I of 1890, s. 6 (3) (4)—“Entire estate” of defaulter—Lands held under different patta—Sale of land comprised in one patta—No arrears of revenue due—Subsequent sale of same land for arrears of revenue due on other land held under different patta—Validity.*—First defendant held lands, under two separate pattas, in two different villages. The land situated in one of the villages was, in 1897, sold at a Court sale in execution of a decree, and was purchased by plaintiff. At the date of this sale no arrears of revenue were due in respect of any of first defendant's lands situate in either village. At a date subsequent

which he had purchased at the Court sale. Plaintiff now sued for a declaration that the sale to second defendant for arrears of revenue was invalid. Held that plaintiff was entitled to the declaration. *Per Moores, J.*—Inasmuch as plaintiff had failed to obtain a transfer of patta into his own name after his

village. Having regard to s. 5 (3) (4) of Act I of 1890, the “movable and immovable property of a defaulter” referred to in s. 5 of Madras Act II of 1864, must be taken to mean the interest of the defaulter in the land. Inasmuch as the interest of

MADRAS REVENUE RECOVERY ACT
(MAD. ACT II OF 1864)—continued.

—ss. 5, 25 and 44—concluded.

another patta forms another estate. *NARAYANA RAJA v. RAMACHANDRA RAJA* (1902)
 [I. L. R., 28 Mad., 521]

—s. 32—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.
 [I. L. R., 28 Mad., 686]

—ss. 38 and 39—

—*Sale of land for arrears of revenue—Proclamation of purchaser's name—Subsequent contention that purchase was benami—Validity.*—Where land has been sold for arrears of revenue, under the Revenue Recovery Act of 1864, and the name of the purchaser has been published in pursuance of s. 39 of that Act, the effect of such proclamation is to vest the property absolutely in the purchaser as there named, and it will not be open to anyone to contend subsequently that the purchaser was a benamidar and that the real purchaser was someone else. *Tirunallayappa Pillai v. Swami Naickar*, I. L. R., 19 Mad., 469, and *Subbarayar v. Aniratha Upadesayyar*, I. L. R., 20 Mad., 494, explained. *NARAYANA CHETTIAR v. CHOKKAPPAN MUDALIAR* (1901)
 [I. L. R., 25 Mad., 655]

—s. 45—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR
 [I. L. R., 28 Mad., 686]

See LAND REVENUE.

[I. L. R., 28 Mad., 730]

—*Land Improvement Loans Act (XIX of 1883), s. 7, cl. 1 (a)—Revenue Recovery Act—Advance to owner of two pieces of land—Security taken on one alone—Sale of the other piece in*

with reference to a single person, must be read as meaning the “entire estate” and, before s. 3 of the Regulation can apply, the “estate” must be such as had “revenue due to Government” upon it. A patta represents an entire estate, and land held under

[I. L. R., 25 Mad., 573]

MAHOMEDAN LAW—CUSTOM—
concluded.

to perform all customary rites *RAMRAG NARAYAN BELLARY v. KRISHNAN (1901)*

[I. L. R., 28 Bom., 193]

MAHOMEDAN LAW—DEBTS.

creditors have the right to sue such of the heirs as have taken the estate, but they are entitled to have recourse to a single heir only in a case where all the effects are in the hands of that heir. *PATHUMMABI v. VITIL UMMACHABI (1902)*

[I. L. R., 28 Mad., 734]

MAHOMEDAN LAW—DOWER.

1.—*Suit on a mortgage executed by judgment-debtor—Decree for sale—Death of judgment-debtor—Sale by Court—Attempt by purchaser to obtain possession—Resistance by widow on ground that her dower formed a charge on the land.*—A widow's claim for dower under Mahomedan Law is not a lien on her husband's property, such as is obtained by a mortgage, but ranks on a par with ordinary debts. *AMEER ANNAL v. SANKARANARAYANAN CHETTI (1901)*

[I. L. R., 25 Mad., 658]

2.—*Widow in possession in lieu of dower—Widow not precluded from suing to recover her dower.*—Held that there was nothing to prevent a Mahomedan widow, who was in possession of property of her late husband in lieu of dower, from suing to recover her dower from the heirs of the deceased husband. *Asis-ullah Khan v. Ahmad Ali Khan (1858)*, I. L. R., 7 All., 653, referred to. *GHULAM ALI v. SAGIR-UL-NISSA BISI (1901)*

[I. L. R., 23 All., 432]

MAHOMEDAN LAW—ENDOWMENT.**MAHOMEDAN LAW—ENDOWMENT—**
continued.

wagf—*Condition that wagf-nama should not take effect until registration.*—According to the

3.—*Wagf of money held to be valid.*—Held that, according to the Mahomedan law, a wagf of movable property may be validly constituted. *Fatima Bides v. Aruff Ismailjee Bham (1891)*, 9 C. L. B., 68, dissented from. *ABU SATID KHAN v. BAKAR ALI (1901)*

[I. L. R., 24 All., 190]

4.—*Wagf—Essentials of a valid wagf, according to the Shia law—Illusory dedication.*—One Muhammad Faiyaz Ali Khan, a Mahomedan of the Shia sect, on the 7th of May, 1878, caused to be drawn up an instrument, by which he

The settlor, however, after naming himself as the mu-

always be acted on after his death, and, so far as he himself was concerned, laid down no rules for the

RAMM (1900)

[5 C. W. N., 177; s.c., I. L. R., 28 I. A., 15; I. L. R., 23 All., 233]

2.—*Shias—Wagf—Invalid wagf—Condition suspending operation of wagf-*

MAHOMEDAN LAW—PRE-EMPTION

—concluded.

successful plaintiff did not by that transaction forfeit the fruits of her decree. *Rajjo v. Lalman* (1892), I. L. R., 5 All., 180, distinguished. *Ram Sahas v. Gaya* (1894), I. L. R., 7 All., 107, referred to. *Beza Bibi v. Akbar Ali* (1901)

(I. L. R., 24 All., 119)

MAHOMEDAN LAW—WIDOW.

See MAHOMEDAN LAW—DOWER.

—Alienations by widow—Validity.—According to the Mahomedan Law, the widowed mother is not the legal guardian of the property of her minor children, and cannot do any act relating to their

Mahomedan Law, unlike the Hindu Law, does not constitute the senior co-heir the managing co-parcener, entitled to administer and manage the estate until partition. Alienations by such a widow cannot, therefore, be upheld by extending to Mahomedans the principle of Hindu Law applicable to the acts of a guardian or managing member of a family. *PATUMNABI v. VITTEL UMMAHABI* (1902)

(I. L. R., 26 Mad., 734)

MAHOMEDAN LAW—WIFE.

See MAHOMEDAN LAW—DOWER.

MAHOMEDAN LAW—WILL.

See MAHOMEDAN LAW—ENDOWMENT.

(I. L. R., 25 All., 236)

—Testator—Bequest to stranger of more than one-third of testator's property—Consent of heirs—Alienation—Attachment—Civil Procedure Code (Act XIX of 1882), s. 276.—Where a Mahomedan, by his will, bequeaths more than one-third of

DAULATRAM KHUSHALCHAND v. ABUL KAYUM NABUDIN (1903) . . . I. L. R., 26 Bom., 487

MAINTENANCE.

See CONTRACT—CONSTRUCTION OF CONTRACTS . . . I. L. R., 28 I. A., 188

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION, AND POWERS OF COURT. (I. L. R., 26 Bom., 707)

MAINTENANCE—concluded.

See GRANT—CONSTRUCTION OF GRANTS.

(I. L. R., 26 Mad., 202
23 All., 164)

See HINDU LAW—MAINTENANCE.

See RES JUDICATA—CAUSE OF ACTION—CONTINUING GUARANTEE.

(I. L. R., 27 Bom., 418)

See SMALL CAUSE COURT, MOFESSIL—JURISDICTION—MAINTENANCE.

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

1.—Criminal Procedure Code, ss. 498, 499, 490—

Procedure, and the parties afterwards come to an agreement between themselves as to what is to be paid, the existence of such agreement will not of itself be a bar to the enforcement of the order for maintenance; but it will be the duty of the party chargeable, if he wishes to be relieved from the payment of the maintenance allowance, to bring such settlement to the notice of the Court and obtain a cancellation of the order for maintenance. *Bangamma v. Muhammad Ali* (1896), I. L. R., 10 Mad., 13, not followed. *PRADHU LAL v. RAMI* (1902) . . . I. L. R., 25 All., 165

2.—Criminal Procedure Code, s. 498—Application for cancellation of order for maintenance.—Where it is sought, under ss. 488, sub-ss (4) and (5), of the Code of Criminal Procedure, to have an order passed under sub-s. (1) of s. 498 set aside, such application must be made to the Magistrate who passed the original order, or to his successor in office, who, and who only, has jurisdiction in the matter. *BHAGWANIA v. SHERO CHARAN LAL* (1903)

(I. L. R., 25 All., 545)

MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT, 1887 (MAD. ACT 1 OF 1887).

—ss. 2, 3, 4, 6—

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND.

(I. L. R., 24 Mad., 47)

MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT, 1900 (MAD. ACT 1 OF 1900).

—ss. 3, 4, 7, 10—

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND

(I. L. R., 24 Mad., 47)

MALABAR LAW.

—Liability of improvements made by sub-tenants of kanomdar for rent due by kanomdar to

MALABAR LAW—concluded.

jenmi.—Whether improvements made by the sub-tenants of a *kanomdar* are liable for rent due by the *kanomdar* to the *jenmi*.—*Quare Achuta v. Kali, I. L. R., 7 Mad., 545, and Eressa Menon v. Shama Patter, I L R., 31 Mad., 138, referred to. VEDAPUTRATH v. AVARA (1901)*

[I. L. R., 25 Mad., 568]

MALABAR LAW—CUSTOM.

—*Kaikam lease for indefinite period*.—Customary law as to duration of lease.—By the customary law of Malabar, a tenant under a *kanom* or *kulakanom* lease is entitled not to be redeemed or ejected until the expiration of twelve years. But, where no time is fixed for the duration of the lease, it does not, under the customary law, determine on the expiration of twelve years from its date. *KELAPPAN v. MADHAVI (1901)* I. L. R., 25 Mad., 452

MALABAR LAW—ENDOWMENT.

See PARTIES—ADDING PARTIES TO SUITS—PLAINTIFFS

[I. L. R., 28 Mad., 461]

1.—*Appointment of trustee to tarwad charities by karnavan*.—Validity.—Though the *karnavan* of a Malabar *tarwad* has the power, unless specially limited by family usage or agreement, of himself

2.—*Suit against karnavan as manager of tarwad*.—Attachment of tarwad property under decree.—Subsequent order of release.—Suit to cancel order of release, barred by s. 244 of Civil Procedure Code.—Plaintiff in a suit obtained a decree against the *karnavan* of defendants, as senior member and manager of the *tarwad*, and attached *tarwad* property in execution thereof. Objection was then raised by defendants that the property was not liable under the decree, and the property was ordered to be released. Upon a suit being brought by plaintiff against defendants for the cancellation of the last-mentioned order. Held that the suit was not maintainable, by reason of s. 244 of the Code of Civil Procedure. *KAMAL KUTTI v. ISHAYI (1901)*

[I. L. R., 24 Mad., 659]

MALABAR LAW—INHERITANCE.

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cated
a hypothecation bond over certain property in plaintiff's favour, subject to a prior mortgage which had been executed by his uncle in favour of P. caused the I for sale, as allowed, purchased

MALABAR**LAW—INHERITANCE**

—concluded.

the property subject to P's and plaintiff's debts

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MALIKANA—concluded.

1859.—There may be an out-and-out sale of the *malikana* rights in a newly-accreted estate apart from the parent estate. *Khadai v. Ghina Hazari* (1869), 3 B. L. R., 339, followed *PROMOTHA NATH MAJUMDAR v. ROBERT WATSON & Co, Ltd* (1903) . . . 7 C. W. N., 846

MAMLATDAR, JURISDICTION OF.

See **MAMLATDARS' COURTS ACT.**

—*Possessory suit—Jurisdiction—Previous order of Magistrate under s. 145, Criminal Procedure Code (Act V of 1899).*—On the 22nd of December, 1900, a Magistrate passed an order, under s. 145 of the Criminal Procedure Code (Act V of 1899), deciding that, on the 20th of October, 1900, one Sayad Martooza was in actual possession of certain land. On the 6th of March, 1901, the plaintiff brought this suit against the defendants (of whom the said Sayad Martooza was one) to recover possession of the said land, alleging that on the 10th of October, 1900, the defendants had wrongfully dispossessed him of it. The *Mamlatdar* held that, having regard to the Magistrate's order of the 22nd of December, 1900, he had no jurisdiction to hear the suit. On application to the High Court: *Held* (reversing the case for disposal) that the *Mamlatdar* had jurisdiction to try the case. *Lilla v. Annaji* (1881), 1. L. R., 5 Bom., 887, distinguished. *NAGAPPA v. BABUDIN* (1901)

[1. L. R., 26 Bom., 363]

MAMLATDARS' COURTS ACT (BOM. ACT III OF 1876).

—exercise of powers conferred by—

See **BOMBAY LAND-REVENUE CODE (BOM. ACT V OF 1879), s. 15.**

[1. L. R., 25 Bom., 318]

—s. 4—

—*Natural water-course—Riparian proprietors—Obstruction to the flow of water—Injunction—Jurisdiction.*—*Held* by the Full Bench (WHITWORTH J. dissenting) that a *Mamlatdar* has, under the *Mamlatdars' Courts Act* (Bom. Act III of 1876), jurisdiction to inquire into a case in which it is alleged that an upper riparian proprietor has unduly interfered with the flow of water in a natural water-course from which a lower riparian proprietor also takes water. *SOM GOPAL BHOGALE v. VINAYAK BHIKANBHAT* (1900) . . . 1. L. R., 25 Bom., 395

—s. 13—

—*Limitation Act (XV of 1877), Sch. II, Art. 47—Possessory suit—Mamlatdar's Court.*—In a possessory suit instituted in a *Mamlatdar's Court*, neither the plaintiff nor the defendant appeared at the hearing. The case was therefore disposed of by the *Mamlatdar*, under the first part of s. 13 of the *Mamlatdars' Courts Act* (Bombay Act III of 1876). *Held* that the order of the *Mamlatdar* was an order rejecting the plaint. A regular suit for possession having been brought in a Civil Court more than

MAMLATDARS' COURTS ACT (BOM. ACT III OF 1876)—concluded.

—s. 13—concluded.

three years after the above order of the *Mamlatdar*: *Held* that the suit was time-barred under Art. 47, Sch. II, of the Limitation Act (XV of 1877). *PURUSHOTTAM DAYARAM v. CHATARGIR GURU ARJUNGER* (1900) . . . 1. L. R., 25 Bom., 83

MANAGEMENT OF ESTATE BY COURT.

See **CRIMINAL PROCEDURE CODE, s. 146.**

[1. L. R., 29 Calc., 382]

—*Rights of judgment-creditors.*—There is no law or procedure under which a Court can, on the mere application of the parties interested, take over the management of properties belonging to an estate, and pass such orders as would place them entirely beyond the reach of the judgment-creditors of the estate. *PURAN MAL v. JANKI PRESHAD SINGH* (1901) . . . 1. L. R., 28 Calc., 680; s.c., 11 C. W. N., 114

MANAGER.

—liability of landlord for acts of—

See **RIOTING. 1. L. R., 29 Calc., 504**

—of Court of Wards—

See **PUBLIC SERVANT.**

[1. L. R., 28 Calc., 344]

—of endowment—

See **HINDU LAW—ENDOWMENT.**

—of endowment, removal of—

See **ACT—1863—XX, s. 14.**

[1. L. R., 24 Mad., 343]

—of indigo concern—

See **POSSESSION, ORDER OF CRIMINAL COURT as to—PARTIES TO PROCEEDINGS** . . . 7 C. W. N., 208

—of joint family—

See **ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.**

[1. L. R., 27 Bom., 287]

See **HINDU LAW—JOINT FAMILY—**

NATURE OF JOINT FAMILY, AND POSITION OF MANAGER;

DEBTS, AND JOINT FAMILY BUSINESS; 7 C. W. N., 725

POWERS OF ALIENATION BY MEMBERS—MANAGER.

See **PARTITION—JURISDICTION OF CIVIL COURTS IN SUITS RESPECTING PARTITION** . . . 1. L. R., 28 Calc., 789

MANAGER—concluded.

—of land—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS . . . 7 C. W. N., 825

—of lunatic's estate—

See LUNATIC . I. L. R., 30 Calc., 973

MAPS.

See EVIDENCE—CIVIL CASES—MAPS

MARITIME LIEN.

See ADMIRALTY OR VICE-ADMIRALTY JURISDICTION I. L. R., 22 Calc., 402

MARKET RATE.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.

MARRIAGE.

See BIGAMY.

See HINDU LAW—

MARRIAGE;

WIDOW—DISQUALIFICATIONS—RE-MARRIAGE.

See MAHOMEDAN LAW—MARRIAGE.

—agreements or contracts concerning—

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY [I. L. R., 23 All., 496]

See HINDU LAW—HUSBAND AND WIFE [I. L. R., 28 Calc., 751]

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—BREACH OF PROMISE OF MARRIAGE [I. L. R., 24 Mad., 652]

—dissolution of—

See COSTS—SPECIAL CASES—DIVORCE [I. L. R., 28 Calc., 84]

See DIVORCE ACT.

—proof of—

See RESTITUTION OF CONJUGAL RIGHTS [I. L. R., 28 Calc., 37]

—validity of—

See ADULTERY . 7 C. W. N., 143

MARRIED WOMAN.

See ADULTERY . I. L. R., 30 Calc., 910

See MINOR—REPRESENTATION OF MINOR^s IN SUITS . I. L. R., 23 All., 459

—enticing away—

See ADULTERY . 7 C. W. N., 143

MASTER AND SERVANT.

See PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890), s. 3.

[I. L. R., 26 Bom., 609]

See PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL . I. L. R., 30 Calc., 207

See SERVANT.

—liability of servant—

See BENGAL EXCISE ACT (VII OF 1878), s. 53 . . I. L. R., 29 Calc., 496

—Theft and forgery by servants, no duty to guard against.—There is no duty incumbent upon mercantile men, any more than upon other people, to anticipate and to take precautions against the possibility of a theft of letters or of forgery being committed. *Societe Generale v. Metropolitan Bank* (1873), 27 L. T., 849, referred to *MORRISON v. VERSCHOYLE* (1901) . . 6 C. W. N., 429

MATERIAL ERROR.

See ERROR . I. L. R., 29 Calc., 461

MAXIMS.

—actio personalis moritur cum persona—

See ABATEMENT OF SUIT—APPEALS [I. L. R., 26 Bom., 597]

See MALICIOUS PROSECUTION [I. L. R., 26 Mad., 499]

—communis error facit jus—

See OUDH ESTATES ACT (I OF 1869) [5 C. W. N., 602]

—cujus est solum ejus est usque ad colum—

See INJUNCTION—SPECIAL CASES—CUTTING TREES . I. L. R., 24 All., 499

—ignorantia legis neminem excusat—

See EMBARKMENT . 7 C. W. N., 286

—qui facit per alium facit per se—

See SIGNATURE . I. L. R., 24 All., 319

MEASUREMENT OF LANDS.

See BENGAL TENANCY ACT, ss. 90, 52 AND 188 . . 7 C. W. N., 83

MEDICAL EVIDENCE.

See EVIDENCE—CRIMINAL CASES—MEDICAL EVIDENCE.

MERCHANDISE MARKS ACT (IV OF 1889).

—ss. 4, 6—

See TRADE MARK.

[I. L. R., 26 Bom., 269]

MERGER.

See LANDLORD AND TENANT—TRANSFER BY LANDLORD. I. L. R., 24 All., 487

See PATNI TENURE.

[I. L. R., 28 Calc., 744]

See SALE FOR ABBEARS OF REVENUE—INCUMBRANCES—ACT XI of 1859.

[I. L. R., 30 Calc., 1071]

MESNE PROFITS.

Col.

1. RIGHT TO, AND LIABILITY FOR . . . 703
2. ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS . . . 704
3. MODE OF ASSESSMENT AND CALCULATION . . . 707

See ATTACHMENT—SUBJECT OF ATTACHMENT—MESNE PROFITS.

See INTEREST—MISCELLANEOUS CASES—MESNE PROFITS.

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION. I. L. R., 26 Bom., 312

See ONUS OF PROOF—MESNE PROFITS.

See PARTITION—MISCELLANEOUS CASES, [6 C. W. N., 698]

See RES JUDICATA—MATTERS IN ISSUE [I. L. R., 25 Bom., 118]

See SMALL CAUSE COURT, MORTGAGE—JURISDICTION—MESNE PROFITS.

—SUIT FOR—

See BENGAL TENANCY ACT, ss. 101 to 111A . . . I. L. R., 28 Calc., 28

See CIVIL PROCEDURE CODE, s. 601.

[6 C. W. N., 710]

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—MESNE PROFITS.

See SPECIFIC RELIEF ACT, s. 9.

[I. L. R., 24 All., 501]

1. RIGHT TO, AND LIABILITY FOR.

1.—Civil Procedure Code, s. 211—Allowance of expenses of collection of rents to a trespasser against whom a decree for mesne profits has

MESNE PROFITS—continued.**1. RIGHT TO, AND LIABILITY FOR—concluded.**

been passed—Principle upon which such expenses should be allowed or disallowed.—In estimating the

trespasser has entered or continued on the property without any *bona fide* belief that he is entitled to do so, where, in thrust himself claim all net revenue or gross Court, in estimating damages, to allow the wrong-doer even such charges as would ordinarily but voluntarily

2. ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS.

2.—Application for assessment—Application for determination of mesne profits—Effect of dismissal of such an application—Execution of decree—Practice—Applications to determine mesne profits are to be treated as applications for execution

been decided in these cases. *As held, relied upon. Kuran Chandra v. Dayadha Kishan (1891), I. L. R., 19 Calc., 132, and Kewal Kishan Singh v. Bhookhari (1896), I. L. R., 24 Calc., 173, discussed and distinguished in RAM KISHORE GHOSH v. GOPI KANT SHARMA (1900) [I. L. R., 23 Calc.]*

3.—Decree for mesne profits to be subsequently assessed—Application for assessment of mesne profits not an application for

MESNE PROFITS—continued.

2. ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS—continued.

All., 304, referred to. MUHAMMAD UMARJAN KHAN
v. ZINAT BEGAM (1903) . I. L. R., 25 *All.*, 385

4.—Attachment of property of wrong person—*Damages and mesne profits, suit for—*

$$f(x) = \frac{1}{2} \left(1 + \frac{x}{\sqrt{1+x^2}} \right) \quad \text{for } x \in \mathbb{R}.$$

Figure 1. The effect of the concentration of the solution on the adsorption of the dye.

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 84

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MESNE PROFITS—continued.

2. ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS—continued.

(1897), 3 C. I. W. N., 748, distinguished. **SURJA
PERSHAD NARAYN SINGH v. REID** (1902)

[L. L. R., 29 Cal., 622;
s.c., 6 C. W. N., 409]

8.—Profits not awarded by decree—*Ereca*.

tion of decree—Jurisdiction—Civil Procedure Code, ss. 211, 244—An order passed in execution, giving to the plaintiff mesne profits not awarded by

the decree, is without infraction. *Kalka Singh v.*

Prague, Dec 1904. D 93 7 4 20 8.11.1904

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1. *Journal of the American Medical Association*, 1997; 277: 1033-1037.

MESNE PROFITS continued.**2. ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS—concluded.**

maintenance, and what sums should be allowed in respect of the funeral ceremonies under the circumstances, considered. *Greenmully Nittokissoree Dossee v. Jagendra Nath Mullick* (1978), *I. L. R.*, 5 *I. A.*, 55, referred to. *DALE KUNWAR v. AMBIKA PARTAP SINGH* (1903). *I. L. R.*, 25 *ALL*, 288

3. MODE OF ASSESSMENT AND CALCULATION.

9.—Plaintiff both landlord and tenant combined—*Mesne profits, assessment of—Landlord and tenant, combined position of—Costs.*—Where the position of the plaintiff is that of landlord

possession from the plaintiff, the mesne profits must be assessed on the value of the crops raised by the

(*I. L. R.*, 30 *Calc.*, 536)

10.—*Raiyati land—Civil Procedure Code (Act XIV of 1882), s. 211—Decree for possession of raiyat land—*When land is *raiya*t, and both the true owner and the trespasser are, under ordinary circumstances, merely rent-receivers, assessment of mesne profits should be made on the basis of fair and reasonable rent. *Ranee Asmed Koor v. Mahasane Indarjeet Koor* (1888), 9 *W. R.*

assessment of mesne profits, between *raiya*t land held by a *raiya*t and the proprietor's private land ordinarily cultivated by him, except as to the cost of cultivation. So, where a *zamindar* obtained a decree

raised on the land, less the expenses for cultivation. *Musamat Rookmee Koor v. Ramtahal Roy*

11.—*Trespasser—Civil Procedure Code, s. 211—Execution of decree—Allowance of collection expenses to a trespasser against whom a decree for mesne profits has been passed.*—Ordinarily, in the case of a decree for mesne profits against a trespasser in possession of immovable property, the collection expenses incurred by him during the period of

MESNE PROFITS—concluded.**3. MODE OF ASSESSMENT AND CALCULATION—concluded.**

his possession will be allowed; it is only when the trespass is
Court, in such expenses
I. L. R., 4 *Chondhra* (1881), *I. v. Shoshi* *A.*, 124; *1 ALL*, 518; *Sharf-ud-din Khan v. Fatehyab Khan* (1897), *I. L. R.*, 20 *ALL*, 208, and *Shitab Dei v. Ajudha Prasad* (1857), *I. L. R.*, 10 *ALL*, 13, referred to. *ABDUL GHAFYR v. RAJA RAM* (1901) (*I. L. R.*, 23 *ALL*, 252)

MIGRATING FAMILY.

See *HINDU LAW—INHERITANCE—MIGRATING FAMILIES.*

MILITARY OFFICER.

See *ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY.*

(*I. L. R.*, 25 *Mad.*, 403)

MINOR.

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| 2. CUSTODY OF MINORS | " |
| 3. REPRESENTATION OF MINOR IN SUITS | 711 |

See *ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION*

(*I. L. R.*, 24 *Mad.*, 328
27 *Bom.*, 287)

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CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE;

(*I. L. R.*, 30 *Calc.*, 613)

COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

(*I. L. R.*, 28 *Bom.*, 109
7 *C. W. N.*, 90)

See *DECLARATORY DECREE, SUIT FOR—ADOPTION.* *I. L. R.*, 30 *Calc.*, 613

See *GUARDIAN.*

See *GUARDIANS AND WARDS ACT (VIII OF 1890).*

See *HINDU LAW—*

ALIENATION—

ALIENATION BY MOTHER;

ALIENATION BY FATHER;

MINOR—continued.

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ALIENATION—concluded.

ALIENATION BY WIDOW—ALIENATION FOR LEGAL NECESSITY OR WITH CONSENT OF HEIRS OR REVERSIONERS;

[6 C. W. N., 905

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See **LIMITATION ACT, 1877.**

[I. L. R., 28 Calc., 465

See **LIMITATION ACT, 1877—**

s. 7; . I. L. R., 38 Calc., 465

" 29 Calc., 813

s. 7 AND SCH. II, ART. 11;

[I. L. R., 26 Bom., 730

ss. 7 AND 8 AND SCH. II, ART. 106;

[I. L. R., 25 Mad., 26

ss. 7 AND 8 AND SCH. II, ART. 179;

[I. L. R., 25 Mad., 431

s. 8 . 6 C. W. N., 348

[I. L. R., 25 All., 155

See **MAHOMEDAN LAW—GUARDIAN**

See **PARTIES—PARTIES TO SUITS—JOINT FAMILY.** . I. L. R., 25 All., 378

—agreement on behalf of—

See **HINDU LAW—PARTITION—**

REQUISITES FOR PARTITION;

[I. L. R., 30 Calc., 738

EFFECT OF PARTITION

[I. L. R., 30 Calc., 725

—adoption of—

See **HINDU LAW—ADOPTION.**

—liability of, on contract—

See **ESTOPPEL—ESTOPPEL BY CONDUCT.**

[I. L. R., 30 Calc., 539

See **HINDU LAW—CONTRACT—PROMISSORY NOTE.** . I. L. R., 28 Mad., 330

—minority of wife—

See **RESTITUTION OF CONJUGAL RIGHTS**

[I. L. R., 28 Calc., 37

—non-appearance of guardian in suit—

See **CIVIL PROCEDURE CODE, s. 108.**

[5 C. W. N., 58

—payment of interest on behalf of—

See **LIMITATION ACT, 1877, s. 20.**

[I. L. R., 29 Calc., 647

—representation of minor in suits—

See **CIVIL PROCEDURE CODE, s. 108.**

[I. L. R., 24 All., 383

See **PRACTICE—CIVIL CASES—NEXT FRIEND.** . I. L. R., 28 Calc., 264

MINOR—continued.

—right of, to raise objection on attaining majority—

See **LIMITATION—QUESTION OF LIMITATION.** 11 C. W. N., 348

—suit by—

See **ESTOPPEL—ESTOPPEL BY CONDUCT**

[I. L. R., 29 Calc., 128

1. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS.

1.—**Mortgage—Guardian and minor—Act VIII of 1890 (Guardians and Wards Act), ss. 29, 30—Mortgage executed by a minor—Distinction between such mortgage and a mortgage executed by the certificated guardian on behalf of the minor—Act XIX of 1873 (North-Western Provinces Land-revenue Act), ss. 203, 205B.—A mortgage executed by a minor is not valid but only**

MAHAN MOHAN v. RANGE LAL (1901)

[I. L. R., 23 All., 268

2. ———— **Act VIII of 1890 (Guardians and Wards Act), ss. 29 and 30—Guardian and minor—Mortgage by guardian of minor's property—Previous permission of the court—**

TEJPAL v. GANGA (1901). I. L. R., 29 All., 69

2 CUSTODY OF MINORS.

3.—**Suit to recover custody of—Suit by a father for the recovery of his children illegally detained—Tort—Death of defendant pending suit—Survival of cause of action against defendant's heirs—Practice—Procedure.—A Civil Court has jurisdiction to entertain a suit by a father to recover possession**

MINOR—continued.**2. CUSTODY OF MINORS—concluded.**

of his minor children illegally detained by a stranger. Such a suit is not barred by the provisions of the Guardians and Wards Act (VIII of 1890) A
 of his minor
 en illegally
 ending the
 continued
 and legal
 representative, on the ground that the minors were in her possession. Held that the cause of action did not survive as against the widow of the deceased defendant, and that therefore the suit could not proceed. The cause of action which gave rise to the suit was extinguished when the defendant Makimbbhai died. **SHARIFA v. MUNKHAN (1901)**
[I. L. R., 25 Bom., 574]

3. REPRESENTATION OF MINOR IN SUITS.**4.—Setting aside a decree—Representative of**

1890, directing the minor to pay to the respondents a sum of Rs. 50, and a decree was passed in terms of the award. In the following year, the minor, by his next friend, brought this suit to set aside the decree, on the grounds (a) that the minor had not been properly represented, and (b) that leave of the Court under s. 462 of the Civil Procedure Code (XIV of 1852) had not been obtained. The lower Courts allowed the plaintiff's claim, and set aside the decree. On appeal by the defendants. Held (reversing the decree of the lower Courts, and remanding the case for hearing on the merits) (1) that there was nothing on the record to show that the

MINOR—continued.**3. REPRESENTATION OF MINOR IN SUITS—continued.**

suit terminated in an *ex parte* decree for sale against all the defendants. The minors thereupon sued to obtain a declaration that the decree for sale did not affect their interests in the joint family property, inasmuch as they had not been properly represented in the suit in which it was passed, their mother being, as a married woman, incapable in law of acting as their guardian. No question of fraud was shown to arise in the case. Held that the minors, on the facts stated above, were entitled to the decree asked for. **Durga Persad v. Keshto Persad Singh (1882)**, **I. L. R., 8 Cal., 656**; **Mungliam Marwari v. Mohunt Gursahai Nund (1889)**, **I. L. R., 15 I. A., 195**; **Pishnu Keshav v. Ramchandra Bhaikar (1886)**, **I. L. R., 11 Bom., 130**; **Daji Himat v. Dharamram Sadaram (1897)**, **I. L. R., 12 Bom., 18**; **Nawab Mahomed Noorollah Khan v. Harcharan Ras (1874)**, **6 N.-W. P. H. C. Rep., 198**; **Daulat Singh v. Raghubir Singh, Weekly Notes, 1894, p. 141**; and **Raghunath Dayal Sahu v. Bhikya Lal Misser (1883)**, **I. L. R., 12 Cal., 69**, referred to. **SHAM LAL v. GHASITA (1901)**
[I. L. R., 23 All., 489]

8.—Suit on behalf of minor by next friend—Gross negligence of next friend—Review—Right of minor to have suit restored—Minor consenting party to petition for withdrawal—Civil Procedure Code (Act XIV of 1852), s. 462—When the next friend of a minor plaintiff withdraws from the suit, it is open to the minor, through another next friend, to have the suit re-opened on review, on the ground that the former next friend, though guilty of no fraudulent conduct, was grossly negligent as to the minor's interest in withdrawing from the suit. **RAM SARUP LAL v. SHAM LATAPAT HOSEIN (1902)**
[I. L. R., 29 Cal., 735]

7.—Guardian—Guardian ad litem—Civil Procedure Code (Act XIV of 1852), ss. 443, 573—Absence of formal order appointing guardian—Sanction of appointment by Court—Irregularity—Service of summons on minors, defect in—Substantive defect in summons in suit—Under a 443

5.—Hindu Law—Joint Hindu family—Suit by sons to obtain exemption of their shares from sale under a decree on a mortgage—Plaintiffs parties to the suit in which the decree was passed, but minors, and not properly represented—Guardian and minor—Res judicata—Civil Procedure Code, s. 437. A suit was brought by the

a person as such a guardian, the absence of a formal order of appointment is not necessarily fatal to the proceedings. The mother of certain minor defendants appeared throughout the proceedings in a suit as their guardian; the Court admitted the plaint in which she was described as guardian, and in the decree and execution proceedings the Court so described her. Held that, although no formal order appointing her guardian ad litem was drawn up, the minors were effectively represented in the suit by their mother, and with the sanction of the Court. The absence of a formal order appointing the mother guardian ad litem, and the fact that no attempt was made to serve the minors (members of a joint family)

MINOR—concluded.**3. REPRESENTATION OF MINOR IN SUITS**
—concluded

or their mother personally with a summons, before serving it on the only adult male member and the manager of the joint family, were held, under the circumstances, there being nothing to suggest that the interests of the minors were not duly protected, and the defects in procedure not having prejudiced them, to be merely irregularities under s 578 of the

MISCHIEF—concluded.

channel across one's own lands into a jhil in possession of another—Defect in charge—Prejudice—The accused, who were servants of S, were convicted by a Magistrate, under ss 426 and 143 of the Penal Code, for having cut a channel from a jhil which was in the possession of B, and by so doing let out

ground. SHOSHI BHUSHAN BOSE v. GOBIND CHANDRA ROY (1904) 7 C. W. N., 663

of the offence of mischief under s 426, Indian Penal Code, for cutting paddy which the Court found to belong to the complainant, when it was not found that the paddy was not in a fit state to be cut. IN THE MATTER OF MIRAS CHAUDHARI (1903)

[7 C. W. N., 713]

5.—Intention—Indian Penal Code, ss. 403, 426—Criminal misappropriation of property—Dishonest intention—Deterioration of the value of mortgaged property—When the reversioner of

BANERJEE v. TANSUK ROY SERRAOJI (1901)

[6 C. W. N., 34]

MISCONDUCT.

—of arbitrator—

See ARBITRATION—AWARDS—VALIDITY OF AWARDS, AND GROUND FOR SETTING THEM ASIDE.

MISDESCRIPTION.

—of property, effect of—

See PRACTICE—CIVIL CASES—SALE BY REGISTRAR. I. L. R., 29 Cal., 420

See SALE IN EXECUTION OF DECREE—ERRORS IN DESCRIPTION OF PROPERTY SOLD.

MISDIRECTION.

See CHARGE TO JURY—

SUMMING UP IN GENERAL CASES;

[I. L. R., 27 Bom., 644]

MISAPPROPRIATION OF PROPERTY.

See COMPANY—WINDING UP—LIABILITY OF DIRECTORS AND OFFICERS

[I. L. R., 29 Cal., 688]

See CRIMINAL MISAPPROPRIATION.

MISCHIEF.

See LANDMARKS.

[I. L. R., 30 Cal., 1084]

1.—Bona fide claim of right—Indian Penal Code (Act XLV of 1860), s 426—Practice—Rule—Magistrate, if can add to or supplement his judgment, in showing cause—Where the accused was convicted of the offence of mischief, s 426, Indian Penal Code. Held that the conviction was bad, inasmuch as the accused acted in the exercise of a

2.—Caste—Act XLV of 1860 (Indian Penal

members of the caste came, and, after telling those who were seated to move to another place, which they refused to do, threw down a shoe amongst the men who were seated. The persons who threw the shoe were convicted of mischief, on the ground that their action had polluted the food, and had, from a Hindu religious point of view, rendered it unfit

3.—Cutting channel—Indian Penal Code (Act XLV of 1860), ss. 426, 143—Riot—Cutting a

MISDIRECTION—concluded.*See CHANGE TO JURY—concluded.***MISDIRECTION ;****SPECIAL CASE—STOLEN PROPERTY.****[I. L. R., 26 Mad., 487]***See CONFESSION—CONFESSIONS TO MAGISTRATE . . . I. L. R., 26 Mad., 33**See MISJUNCTION—CRIMINAL CASES—VERDICT OF JURY, AND MISDIRECTION.***MISJOINDER.****—of causes of action—***See DEBTOR AND CREDITOR***[I. L. R., 26 Bom., 577]***See JOINDER OF CAUSES OF ACTION.***—of causes of action and parties—***See APPEAL—ORDERS—ORDER REFLECTING A PLAINT . . . 6 C. W. N., 585**See MULTIFARIOUSNESS***[I. L. R., 29 Calc., 257]****—of charges—***See JOINDER OF CHARGES***—of parties—***See CRIMINAL PROCEEDINGS***[I. L. R., 28 Calc., 104]**

1.—Misjoinder of parties—Practice—Procedure—Parties—Cause of action—Civil Procedure Code (Act XIV of 1882), ss. 26, 28, 578—Misjoinder of causes of action—Assault by two persons on the same occasion on two other persons—Joint plaintiffs—Joint defendants. Plaintiffs 1 and 2 (father and son) were assaulted by defendants 1 and 2 at an interview in the house of the defendants. Defendant 1 struck the first plaintiff, and the second defendant struck the second plaintiff. The plaintiffs thereupon jointly filed this suit against both the defendants to recover damages for assault. The defendants objected that the suit was bad for misjoinder of parties and causes of action. The lower Courts disallowed the objection, and awarded the plaintiff's claim. On appeal by the defendants: *Held* that the plaintiffs could not join in one suit for damages. They had not the same cause of action, and therefore s. 26 of the Civil Procedure Code (XIV of 1882) did not permit them to be joined. *Held also* that, although the defendants had not really been prejudiced by the misjoinder, it was impossible to hold that the case fell within s. 578 of the Civil Procedure Code (XIV of 1882). That section only applies to mistakes and irregularities subsequently committed in a suit which has been instituted in such a way as to give the Court jurisdiction to try it. The suit must first be instituted in the manner allowed by law. But the law, as it stands at present, does not authorize a suit, which is really two separate suits in which separate plaintiffs are concerned, to be instituted, nor does it give the Court jurisdiction to entertain a suit thus instituted. *Held, also*, that

MISJOINDER—concluded.

the defendants could be sued together under s. 28 of the Civil Procedure Code (XIV of 1882), as they were acting in concert. If two persons combine to attack a third person, the latter can join them as defendants in a suit for damages. **VARAJAL BHAI-SHANKER v. RAMDAT HARIKRISHNA (1901)**

[I. L. R., 28 Bom., 259]

2.—Civil Procedure Code, s. 31—Misjoinder of defendants and causes of action—Suit by transferee from heir of deceased Mahomedan against another heir and transferee from such other heir.—A plaintiff came into Court, claiming a portion of the estate of

Mahomed separate property that the another of the heirs of the deceased, who was in possession of some of it, and by certain transferees of other portions from the said heir. Both the remaining heir and the transferees from him were made defendants. *Held* that there was no misjoinder of parties or causes of action in such a suit. *Inder Khar v. Gur Prasad (1886), I. L. R., 11 All., 33*, followed. **MATHEW ALI KHAN v. SAJJAD HUSAIN KHAN (1903) . . . I. L. R., 24 All., 358**

3.—Civil Procedure Code (Act XIV of 1882), s. 26—Joinder of plaintiffs—Right claimed in the alternative.—The widow and the adopted son of a deceased person joined, as plaintiffs, in a suit to recover money payable by the defendants to the deceased. The money was undoubtedly due to one or other of them, and they were

followed. **Lingammal v. Chinna Venkatammal, I. L. R., 8 Mad., 239**, explained. **PINAPATI MAUTUNSATTA v. PINAPATI JANAKAMMA (28-1903) . . . I. L. R., 28 Mad., 847**

MISTAKE.**—money paid by—***See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS.***[I. L. R., 25 All., 527.]****—of calculation—***See CIVIL PROCEDURE CODE, s. 211—QUESTIONS IN EXECUTION OF DECREES [6 C. W. N., 627]***—of fact—***See PLAINT—AMENDMENT OF PLAINT. [I. L. R., 30 Calc., 699]***—of law—***See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—MISCELLANEOUS CASES . . . I. L. R., 30 I. A., 20*

MISTAKE—concluded.**—probate granted by—**

See PROBATE—TO WHOM GRANTED.

[8 C. W. N., 787]

—rent paid by—

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY PAYMENT OF RENT

[I. L. R., 26 Bom., 410]

MOFUSSIL COURTS.**—suit to set aside decrees of, on ground of fraud—**

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL.

[I. L. R., 30 Calc., 389]

MOHUNT.

See HINDU LAW—

ENDOWMENT;

INHERITANCE—RELIGIOUS PERSONS

[7 C. W. N., 145]

MOHURBHUNJ.

See TRIBUTARY MANALS OF ORISSA

MOKURARI ISTEMRARI TENURE.

See GRANT—CONSTRUCTION OF GRANTS.

[I. L. R., 30 Calc., 20]

MOKURARI LEASE.

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI of 1859

[I. L. R., 30 Calc., 1071]

MONEY-DECREE.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DECREEES

[I. L. R., 27 Bom., 556
6 C. W. N., 5]

See BENGAL TENANCY ACT, s. 189.

[8 C. W. N., 124]

See EXECUTION OF DECREE—EXECUTION AGAINST REPRESENTATIVES

[I. L. R., 30 Calc., 961]

See REGISTRATION ACT (III of 1877), s. 23

[I. L. R., 29 Calc., 654]

See TRANSFER OF PROPERTY ACT, s. 99.

[I. L. R., 30 Calc., 463]

MONEY HAD AND RECEIVED.

See LIMITATION ACT, SCH. II, ARTS. 62 AND 97.

MONEY HAD AND RECEIVED—concluded.

—Contract Act (IX of 1872), s. 72—Right to recover money had and received to plaintiff's use, unaffected by s. 72.—Defendant had sought to exercise, as against plaintiff, the special powers conferred upon landholders by s. 38 of the Rent Recovery Act. In fact, the relations between defendant and plaintiff were not such as entitled defendant to exercise those powers. Plaintiff, in order to avert the injury which he would have sustained if his interest in the land had been sold, paid the

I. L. R., 13 Calc., 656, approved. NARAYANASAMI REDDI v. OSURU REDDI (1901)

[I. L. R., 25 Mad., 548]

MONEY LENT.

See LIMITATION ACT, 1877, SCH. II, ART. 67

[I. L. R., 24 All., 251]

—partner cannot sue firm for—

See PARTNERSHIP—SUITS RESPECTING PARTNERSHIPS.

[I. L. R., 25 Bom., 608]

MONEY-ORDER.

See POSTAL MONEY-ORDER.

MONEY PAID.

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

—to prevent sale—

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

MONEY PAYABLE BY INSTALLMENTS.

See INSTALLMENTS.

MOOKTEAR.

See PLEADER—AUTHORITY OF, TO BIND CLIENT

[7 C. W. N., 351]

1.—Dismissal of—Statutes, interpretation of—Legal Practitioners' Act (XVIII of 1879, as amended by Act XI of 1896), ss. 12, 13, cl. (ff), 14, 36—"Any other reasonable cause," meaning of—Ejusdem generis—Professional misconduct—Offence committed prior to admission as legal prac-

MORTGAGE—continued

See DECREE—CONSTRUCTION OF DECREE—
MORTGAGE

See DEED—

EXECUTION; . 5 C. W. N., 454

ATTESTATION.

[I. L. R., 27 Bom., 91

7 E. W. N., 384

See EVIDENCE—CIVIL CASES—DECREE—
DECREE NOT INTER PARTES

[7 C. W. N., 54

See EXECUTION OF DECREE—MODE OF
EXECUTION—MORTGAGE

See HINDU LAW—

ALIENATION—

ALIENATION BY FATHER;

ALIENATION BY WIDOW—SETTING
ASIDE ALIENATIONS, AND WASTE;

[5 C. W. N., 445

GUARDIAN; I. L. R., 26 Bom., 433

JOINT FAMILY — POWERS OF

ALIENATION BY MEMBERS—

MANAGER; I. L. R., 25 All., 407

PARTITION—EFFECT OF PARTITION;

[I. L. R., 24 All., 483

USURY.

See INTEREST—

MISCELLANEOUS CASES—MORTGAGE;

WHERE NO STIPULATION, OR STIPU-
LATED TIME HAS EXPIRED;

STIPULATIONS AMOUNTING OR NOT
TO PENALTIES

[I. L. R., 29 Calc., 43

See LIMITATION ACT, 1877—

s. 19—ACKNOWLEDGMENT OF
DEBTS;

[I. L. R., 25 Mad., 220

SCH II—

ART. 10; I. L. R., 24 All., 17

ART. 132; 5 C. W. N., 356

ART. 134;

ART. 141—ADVERSE POSSESSION;

[I. L. R., 27 Bom., 43

ART. 147;

ART. 148;

ART. 179—LAW APPLICABLE TO
APPLICATION FOR EXECUTION.

[I. L. R., 30 Calc., 751

See MUHAMMADAN LAW—PRE-EMPTION.

[I. L. R., 24 All., 119

See MALABAR LAW—MORTGAGE.

See ONUS OF PROOF—MORTGAGE.

MORTGAGE—continued.

See PARDASHAH WOMEN.

[I. L. R., 28 Calc., 549

See PARTIES—PARTIES TO SUITS—

JOINT FAMILY;

[I. L. R., 28 Calc., 517

" 24 All., 459

" 25 All., 182

MORTGAGES, SUITS CONCERNING.

See POSSESSION—SUITS FOR POSSESSION.

[7 C. W. N., 607

See PROBATE—TO WHOM GRANTED.

[6 C. W. N., 787

See PUBLIC DEMANDS RECOVERY ACT
(BEN. ACT VII OF 1860), ss 2, ETC.

[I. L. R., 29 Calc., 537

See REGISTRATION ACT (III OF 1877)—
s. 24; . I. L. R., 29 Calc., 654

s. 50.

See RELINQUISHMENT OF, OR OMISSION TO
SUE FOR, PORTION OF CLAIM

[I. L. R., 24 Mad., 96

See RES JUDICATA—MATTERS IN ISSUE.

[I. L. R., 26 Bom., 661

See SALE FOR ARREARS OF RENT—

INCUMBRANCES, 6 C. W. N., 834

SETTING ASIDE SALE—GENERAL

CASES . I. L. R., 29 Calc., 1

See SIGNATURE . I. L. R., 24 All., 319

See SMALL CLAUSE COURT—PRESIDENCY
TOWNS—JURISDICTION—IMMOVABLE

PROPERTY . I. L. R., 26 Bom., 62

See STAMP ACT (II OF 1890), SCH. I,
ARTS. 32 AND 40

[I. L. R., 25 Bom., 370

See TITLE—MISCELLANEOUS CASES.

[I. L. R., 25 Mad., 507

See TRANSFER OF PROPERTY ACT—

s. 2—"NOTICE;"

[7 C. W. N., 11

s. 65;

[I. L. R., 26 Mad., 385

s. 74;

[I. L. R., 26 Mad., 637

s. 62;

[I. L. R., 24 Mad., 85, 96

" 6 C. W. N., 583

s. 63;

[I. L. R., 24 All., 461

" 25 All., 179

s. 63 AND 69;

[I. L. R., 25 Mad., 244

s. 69;

[I. L. R., 29 Calc., 651

MORTGAGE—continued.

See TRANSFER OF PROPERTY ACT—
concluded.

s. 90;

[7 C. W. N., 744

I. L. R., 25 All, 79

s. 93;

[I. L. R., 23 All, 88

s. 99;

[I. L. R., 30 Calc., 463

s. 100;

[I. L. R., 24 Mad., 397

—alteration of bond—

See CONTRACT—ALTERATION OF CON-
TRACTS—ALTERATION BY PARTY.

[I. L. R., 25 All, 580

—by guardian—

See MINOR—LIABILITY OF MINOR ON, AND
RIGHT TO ENFORCE, CONTRACTS.

[I. L. R., 25 All, 59

—by landlord to tenant—

See LANDLORD AND TENANT—TRANSFER
BY LANDLORD. I. L. R., 24 All, 487

—by minor—

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[I. L. R., 30 Calc., 539

See MINOR—LIABILITY OF MINOR ON, AND
RIGHT TO ENFORCE, CONTRACTS.

[I. L. R., 23 All, 288

—evidence of—

See VENDOR AND PURCHASER—MISCELLA-
NEOUS CASES. 6 C. W. N., 182

—form of mortgage—

See EVIDENCE—PAROL EVIDENCE.

[I. L. R., 28 Calc., 256, 269

—inclusion in, of amount of decree—

See CIVIL PROCEDURE CODE, s. 257A.

[I. L. R., 26 Bom., 252

—marshalling—

See SALE IN EXECUTION OF DECREE—
MORTGAGED PROPERTY.

[I. L. R., 29 Calc., 25

—possession under mortgage—

See MORTGAGE—REDEMPTION—RIGHT OF
REDEMPTION. 6 C. W. N., 601

—proof of execution of—

See EVIDENCE ACT, s. 68. 6 C. W. N., 395

—property sold subject to—

See SALE IN EXECUTION OF DECREE—

MORTGAGED PROPERTY;

DISTRIBUTION OF SALE PROCEEDS;

[5 C. W. N., 649

MORTGAGE—continued.

—property sold subject to—concluded.

See SALE IN EXECUTION OF DECREE—
concluded.

SETTING ASIDE SALE—GENERAL
CASES;

[I. L. R., 25 Mad., 244

IRREGULARITY.

[I. L. R., 30 Calc., 142

—redemption of—

See MORTGAGE—

CONSTRUCTION—USUFRUCTUARY
MORTGAGE.

[I. L. R., 29 I. A., 148

SALE OF MORTGAGED PROPERTY—
PURCHASERS.

[5 C. W. N., 232

See REGISTRATION ACT (III of 1877), s. 17,
cls. (b) and (h).

[I. L. R., 30 Calc., 1016

—sanction of Court—

See CIVIL PROCEDURE CODE, s. 257A.

[I. L. R., 27 Bom., 86

—simple—

See SALE IN EXECUTION OF DECREE—SET-
TING ASIDE SALE—GENERAL CASES.

[5 C. W. N., 63

—suit to enforce—

See RECEIVER. 7 C. W. N., 452

1. FORM OF MORTGAGES.

1.—Anomalous mortgage—Transfer of Prop-
erty Act (IV of 1882), ss. 53, cl. (b), (d), and
58—Usufructuary mortgage—Simple mortgage—
Suit by mortgagees for recovery of debt and, in
default of payment by mortgagors, for foreclosure
and possession.—A mortgage-deed (1) put the mort-
gagees in possession of the mortgaged property, and

pay the mortgage-money, and an implied agreement

through a suit for the recovery of the
default of payment by the mortgagors, for foreclosure
and possession. Held that, owing to the proviso (1),
the mortgage was usufructuary, within the meaning
of cl. (d) of s. 58 of the Transfer of Property Act
(IV of 1882), and, owing to the proviso (2), it was
a simple mortgage under cl. (b) of that section. The
transaction was therefore an anomalous mortgage
provided for by s. 59 of the Act, being a combination

MORTGAGE—continued.**1. FORM OF MORTGAGES—continued.**

of a simple mortgage and an usufructuary mortgage. In such a case the rights and liabilities of the parties must be determined by the contract, as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage. *Held, further*, that, though the plaintiffs were not entitled to regain possession, they having let out the property to the mortgagors for a term, still that circumstance did not affect the distinct and independent right of the plaintiffs to sue for the mortgage-money and to obtain a decree for sale of the mortgaged property. **AMARCHAND LAKHMJI v. KILA MORAR (1903)**

[I. L. R., 27 Bom., 600]

2.—Covenant to pay produce of land—Delhi Agriculturalists' Relief Act (XVII of 1879), s. 22—"Specifically mortgaged"—Transfer of Property Act (IV of 1882), s. 68—Bhiku, an agriculturist (father of defendants 3 to 6), borrowed in 1868 a sum of money from the plaintiff's mother, Yeshubai, under a bond, whereby he mortgaged his house as security, and also covenanted to pay each year to Yeshubai half the produce of certain land as interest

BALSHET v. DRONDO RAMKRISHNA (1901)

[I. L. R., 26 Bom., 33]

3.—English mortgage—Transfer of Property Act (IV of 1882), s. 68 (e)—Covenant for reconveyance not limited to time stipulated for repayment

that the mortgagors "hereby mortgage and assign to the mortgagee" the mortgaged property. *Semble*

MORTGAGE—continued.**1. FORM OF MORTGAGES—concluded.****RAMANA AYTAR (P.B., 1902)**

[I. L. R., 25 Mad., 220]

2. CONSTRUCTION.

lessors, within thirty days of being required so to do. Default having been made, the mortgagees sued

mortgage, with an express covenant to pay the principal and interest in instalments, and conferring a

usufruct; and the express covenant to pay precluded the mortgage from being taken as a purely usufructuary mortgage as defined by the Transfer of Property Act. *Held, further*, that the "Damdapat Eule" is

MORTGAGE—continued.**2. CONSTRUCTION—continued.**

inapplicable to cases of mortgage governed by the Transfer of Property Act. *Ram Kango v. Cally Churn*, 1 L. R. 21 Cal., 841, referred to. *MADHWA SIDDHANTA QASIMINI NIDHI v. VENKATARAMANJULU NAIDU* (1903) . . . I. L. R., 28 Mad., 662

6.—Ejectment—Mortgage for a fixed term—Mortgagor's right to eject—Mortgagee's right to damages for breach of contract.—Held that the plaintiffs, who had granted the land in suit to the defendants for a fixed term free of rent in consideration of past and present advances made to them, were entitled to eject at the expiration of the term, notwithstanding that the land was mortgaged to the defendants.

S.C., I. L. R., 25 All., 115;
7 Q. W. N., 289

6.—Lease—Construction of deed—Mortgage or lease—Land transferred for ten years—Propter to go in liquidation of debt—Suit for redemption brought before expiration of term—Transfer of Property Act (IV of 1882), ss. 53, cl. (d), and 93—Dekhan Agriculturists' Relief Act (XVII of 1879), ss. 8 (2) and 15A.—By a deed dated the 2nd November, 1872, the plaintiff transferred to the defendant a certain piece of land with the right of usufruct for ten years, the plaintiff brought this suit for redemption and possession, alleging the transaction to be a mortgage. Held that it was a mortgage, and that the plaintiff was entitled to redeem even before the expiration of the mortgage term of ten years. *TUKARAM BIN MAIRAL v. RAMCHAND MAITECHAND* (P. N., 1901)

[I. L. R., 26 Bom., 252]

7.—Right in village not held qua zamindar—Construction of deed—Mortgage qua zamindar—Right of mortgagor in village not held qua zamindar—Absence of express provision in deed charian such as "entire right and income."

The schedule specified by name the villages constituting the zamindari, one of these being the village of Sabuliya. The only right, title and interest possessed by the zamindar in this village (which was an *inam* village of certain *Payaks*) was to the annual payment by the *inamdar* of a fixed *kattsadi*, and the amount of this *kattsadi* was all that was

MORTGAGE—continued.**2. CONSTRUCTION—continued.**

included in the approximate annual income specified in the schedule. At the date of the mortgage to plaintiff, the zamindar also possessed a mortgage right over this village, he being the assignee of a mortgage which had been executed by the *Payaks* (the *inamdar*) in 1874, the assignment having been made to him in 1883. In a suit brought against the zamindar in 1898 by plaintiff, on his mortgage, plaintiff contended that the *Payaks* mortgage was not comprised in the mortgage. *Booke v. Lord Kensington*, 25 L. J. (Ch.), 795, referred to. *BRIMARAJU CHETTI v. SRI KUNJA BHABAI GJENDRA DEVU* (1901) . . . I. L. R., 25 Mad., 42

8.—Usufructuary mortgage—Mortgagee put into possession—Contemporaneous lease of mort-

gaged land, in consideration of a loan of Rs. 350, put Bahadur Singh into possession of certain property. He covenanted with the mortgagee to pay him interest at the rate of annas 14 per cent, which, after deducting the Government revenue (which the mortgagor undertook to pay, and did pay regularly), left the sum of Rs. 14-12 payable annually by the mortgagor to the mortgagee for interest. It was further agreed that the mortgagee should pay himself the interest from the profits of the mortgaged property; and further that, if the amount of the mortgage interest was more than the profits

with interest on the sum of Rs. 350, the mortgagee was to pay the balance to the mortgagor.

of the mortgage, at an annual rental of Rs. 14-12, which he promised to pay by two equal half-yearly instalments, the rent, if not paid on fixed dates, to bear interest at the rate of 12 per cent. per annum. The *kattsadi* was drawn up strictly in the form of a lease between a landlord and a tenant, and set forth the remedies available to the lessor under s. 38 of the Rent Act by ejectment in case of failure to pay the stipulated rent. Held that, under the circumstances set forth above, the mortgage and the lease were two distinct transactions. A suit on the *kattsadi* would lie only in a Revenue Court, and the plaintiff was not entitled to recover rent for more than three

MORTGAGE—continued.**3. POSSESSION UNDER MORTGAGE—concluded.**

(reversing the decision of the High Court) that, on the true construction of the deed, the mortgagee was not responsible for the amount of the gross rental as shown in the rent-roll, but only for such sums as were actually received by him or on his behalf, and for such sums, if any, as might have been received by him but for his own neglect or fault. *BANARSI PRASAD v. RAM NARAYAN* (1903)

[I. L. R., 25 All., 387;
s.c., 7 C. W. N., 514

4. POWER OF SALE.

14.—Term of years fixed for mortgage—Mortgagor mortgaging property over a portion of which he has no right—Mortgagee's right to sell and recover money before the expiration of the period fixed—Transfer of Property Act (IV of 1882), ss 67, 68.—In 1889 the defendant mortgaged ten fields to the plaintiff, to secure a loan of Rs. 2,000. The deed provided that the mortgage-debt was to become payable at the expiration of fifteen years, and that in the meantime interest was to be paid yearly at the rate of 6½ per cent. per annum. In 1896 the plaintiff discovered that six of the mortgaged fields were not the property of the defendant, who had therefore no right to mortgage them, and he thereupon demanded further security from the defendant, but was refused. Only two years' interest on the mortgage-debt had been paid by the defendant. In 1898 the plaintiff filed this suit, praying for the sale of the four mortgaged fields which did belong to the defendant, and for a personal decree against him. *Held* that, as the defendant (the mortgagor) had failed to carry out the terms of

16.—Transfer of Property Act (IV of 1882), ss 55, 56, 57—Mortgages holding two mortgages over same property—Suit for sale, based on earlier mortgage alone—Maintainability.—In 1880 B executed a simple mortgage over certain lands in favour of A. In 1886, B mortgaged the same lands to A with possession. A now brought a suit on the earlier mortgage for sale of the mortgaged property subject to the later mortgage. *Held* that the suit could not be maintained. *Sundar Singh v. Bhola*, I L. R., 20 All., 342, referred to. *DORASANI v. VENKATASWAMY* (1901) I. L. R., 25 Mad., 108

5. SALE OF MORTGAGED PROPERTY.**(a) RIGHTS OF MORTGAGEES**

18.—Accession to mortgaged property—Transfer of Property Act (IV of 1882), ss 70, 82—Priorities—Contribution—Distribution of sale-proceeds.—Where, after the execution of two simultaneous mortgages in respect of a house and certain lands appurtenant thereto, the mortgagor

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY—continued.****(a) RIGHTS OF MORTGAGEES—continued.**

erected two other houses on the lands, and subsequently executed various mortgages in respect of the several houses, and the decree in the suit by the fourth mortgagee directed that the whole of the property should be sold free of incumbrances, in separate lots, and the sale-proceeds to be distributed among the various mortgagees in accordance with their priorities and the property more or less subject

to the mortgage, as though they had been in existence at the time when the original security was given. *Held*, also, that, the sale-proceeds being insufficient to pay off the several mortgagees, they were respectively entitled to only such surpluses, after payment of the two prior mortgagees, as might be attributable to the property subject to the respective mortgages. *KRISHNA GOPAL SARDHANI v. MILLER* (1902) I. L. R., 29 Cal., 503

17.—Transfer of Property Act (IV of 1882), ss 55, 56, 57—Mortgages holding two mortgages over same property—Suit for sale, based on earlier mortgage alone—Maintainability.—In 1880 B executed a simple mortgage over certain lands in favour of A. In 1886, B mortgaged the same lands to A with possession. A now brought a suit on the earlier mortgage for sale of the mortgaged property subject to the later mortgage. *Held* that the suit could not be maintained. *Sundar Singh v. Bhola*, I L. R., 20 All., 342, referred to. *DORASANI v. VENKATASWAMY* (1901) I. L. R., 25 Mad., 108

house, being subject to a mortgage, were brought to sale in execution of a money-decree obtained by the mortgagee against the mortgagor, and were sold

the Transfer of Property Act (IV of 1882) was not in force in Bombay. Subsequently the mortgagee filed this suit to enforce his rights under the mortgage against the house, which he sought to make liable for its proportionate share of the mortgage-debt. At the date of sale

ascendant to a proportionate share of the mortgage-debt, he having purchased it subject thereto, and that the plaintiff (the mortgagee) was entitled to recover

MORTGAGE—continued.

**5. SALE OF MORTGAGED PROPERTY—
continued.**

(a) RIGHTS OF MORTGAGEES—continued.

such share from him. *Held* by FULTON, J., dissenting, that where a mortgagee, instead of enforcing his mortgage and bringing the property to sale free of incumbrances (where such course is open, as it was in the present case), brings to sale the equity of redemption in part of the mortgaged property, and buys it himself, an equity arises which entitles the mortgagor to require satisfaction first out of the property bought by the mortgagee. Otherwise the

[L. L. R., 28 Bom., 88

18.—Keeping mortgage alive—Civil Procedure Code (Act XIV of 1852), s. 276—Mortgage, fresh, after attachment—Priority—When the

(1883), L. R., 10 I. A., 67, and *Gokul Dass Gopal Dass v. Ram Bux Soochand* (1884), L. R., 11 I. A., 126, followed. So, where a mortgagor, in order to pay off a previous mortgage decree, executes a mortgage free from encumbrances in favour of a third party, and, after paying off the mortgage decree with the fresh loan, makes over the old mortgage

19.—Priority—Act IV of 1882 (Transfer of Property Act), s. 74—Rights of prior and puisne incumbrancers inter se—The puisne mortgagees instituted a suit on their mortgage without making

MORTGAGE—continued.

**6. SALE OF MORTGAGED PROPERTY—
continued.**

(a) RIGHTS OF MORTGAGEES—continued.

sum which was due upon their mortgage at the date of the institution of their suit. *Held* (1) that the puisne mortgagees were entitled to be put into possession on payment to the prior mortgagees of the sum which was actually due upon the prior mortgage at the date upon which the prior mortgagees purchased, and (2) that such possession was, as to the property included in their own mortgage, proprietary, but, as to the property not so included, possession as mortgagees only; they were not entitled to the rights of the prior mortgagees as purchasers of the equity of redemption. **DELHI AND LONDON BANK v. BIKRAM DAS** (1901)

[L. L. R., 24 All., 185

20 — — — Plaintiff himself, obtaining possession in July, 1897. Plaintiff

21.—Right of sale by puisne mortgagee—*Suit by puisne mortgagee—Right of sale by puisne mortgagee—Decree on first mortgage to which puisne mortgagee was not a party—Transfer of*

which the puisne mortgagee was not a party). *Durga Churn Mahopadhyay v. Chandra Nath Gupta Chowdry* (1899), 4 C. W. N., 511, overruled. *DEBENDRA NARAIN ROY v. RUMTARAN BANERJEE* (P.B., 1903). [L. L. R., 30 Cal., 599; a.c., 7 C. W. N., 766

22.—Surplus sale-proceeds—Transfer of Property Act (IV of 1882), ss. 95, 97—Civil Procedure Code (Act XIV of 1852), s. 276

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MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY—
continued.****(a) RIGHTS OF MORTGAGEES—concluded.**

receives any money out of the surplus sale-proceeds of a share in the property mortgaged to him, sold in

(b) PURCHASERS.

23.—Auction-purchasers—Act IV of 1882 (Transfer of Property Act), ss. 91 (f), 85.—Decree for money—Mortgage by conditional sale—Suit on mortgage—Confession of judgment, followed by decree for possession—Holder of the money decrees not a party—Sale in execution of money decrees—Rights of auction-purchaser—A judgment-debtor under a decree for money mortgaged certain property by a deed of conditional sale. The property mortgaged was attached as the property of the judgment-debtor, and an order for sale was passed. Prior to the sale, however, the mortgagees having put their mortgage into suit, the judgment-debtor confessed judgment, admitted the mortgage-debt, stated that he had not means to pay it, and asked that a decree for possession of the property might be passed in favour of the mortgagees; and a decree was so passed. To this suit the mortgagees, who were found to have had notice of the interest of

auction-purchaser was resisted, in obtaining possession, by the mortgagees, and thereupon sued them for possession. Held that the auction-purchaser was entitled to a decree for possession on redeeming the mortgage. *Saraj Duns; Koer v. Sheo Persad*

24. —Mortgage—Prior and subsequent incumbrances—Suit by prior incumbrancer not making subsequent incumbrancer a party—Suit for redemption and sale by prior mortgagee—Rights of purchaser at auction-sale

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY—
continued.****(b) PURCHASERS—continued.**

under the decree in the first suit, and of the assignee of the original mortgagee.—One K, holding a suit for decree, decree, party fo.

transferred his rights as mortgagee to A, who was thereupon made a defendant. G obtained a decree for redemption and sale. Held that P was entitled

25.—Contribution—Co-mortgagees—Decree on mortgage—Private sale of mortgaged property by one judgment-debtor with leave of Court—Civil Procedure Code (Act XIV of 1882), s. 303—Satisfaction of decrees by one judgment-debtor—Contribution—Suit by purchaser at private sale to effect one of the judgment-debtors in possession of part of mortgaged property—Lien on such part for contribution passes to purchaser—Transfer of Property Act (IV of 1882), s. 43—In 1896 a mortgage-decree was passed against Yammappa and Basappa (respondent-defendants), as co-mortgagees

amount, and the decree-holder obtained a private sale. Before the day fixed for the sale, Yammappa, one of the judgment-debtors, applied to the Court under s. 303 of the Civil Procedure Code (Act XIV of 1882) for a postponement of the sale, in order to enable him to raise the amount of the decree by a private sale of the property. The

second judgment-debtor) was in possession of a portion of the property, and he refused to give up possession, alleging that he had separated from Yammappa and that the land in his possession had fallen to his share on separation, and contending that the sale by Yammappa to Gurbhantappa was not

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MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY—
continued.****(b) PURCHASERS—continued.**

interest of Basappa. The authority given to Yamnappa under that section related only to his interest, but could not affect the interest of the other judgment-debtor (Basappa), who had not joined him in applying for leave to sell under that section. The appellants (plaintiffs), therefore, purchased only that portion of the property covered by the mortgage decree which belonged to their

Basappa's possession to the extent of Basappa's share of the mortgage-debt. Yamnappa had paid off the

transferee of Yamnappa, as soon as it came into existence, under s. 43 of the Transfer of Property Act (IV of 1882). The only right, therefore, which

28.—Payment in adjustment of decrees—Civil Procedure Code (Act XIV of 1882), s. 259—Agreement by purchaser of mortgaged property to pay an agreed sum to mortgagees holding decree for sale—Transfer of Property Act (IV of 1882), s. 57—Payment into Court by purchaser of mortgaged property in pursuance of adjustment of decree out of Court—Limitation Act (IX of

The mortgagee consented to the proposed purchase, and

MORTGAGE—continued.**5. SALE OF MORTGAGED PROPERTY—
concluded.****(b) PURCHASERS—concluded.**

27.—Redemption—Mortgages, prior and subsequent—Right of purchaser of a prior mortgage sale to redeem the rights of a purchaser at a subsequent mortgage sale.—Where the plaintiff purchased certain properties at two mortgage sales,

6 REDEMPTION.**(a) RIGHT OF REDEMPTION.**

money has not been paid of mortgage advanced by S. VARAHALU (1891). I. L. R., 24 Mad., 403

29.—Clog on equity of redemption—Sub-

dants' deceased father, which constituted a clog providing that should not unless that was also pa

MORTGAGE—continued.**G. REDEMPTION—continued****(a) RIGHT OF REDEMPTION—continued.**

redeem the lands, the defendants objected to the redemption under the above clause. *Per CURRIAM—* Following *Noakes & Company, Limited v. Rice (1902)*, *L. R., A. C., 21*, a clause which has the effect of clogging the equity of redemption is void. *Hari Mahadaji v. Balambhal (1884)*, *1 L. R., 9 Bom.*, 233, doubted. *RAMMAL MOTIRAM v. SHIVAJI ANANDRAV (1932)*. *L. L. R., 27 Bom., 154*

30. — *Agreement of sale of the mortgaged property subsequently to mortgage—* It is open to a mortgagor and mortgagee to enter into a contract, subsequently to the mortgage, for the sale of the mortgaged property to the mortgagee. But it must not be part and parcel of the original loan or mortgage bargain. *Ramji v. Chinto, 1 Bom. H. C. E., 199*, followed and applied. *KANTHAYALAI BHAKARAM v. NABHAR LAXMANSHET VANI (1903)* (*L. L. R., 27 Bom., 297*)

31. — *Failure to pay sum ordered by decree for redemption—Decree for redemption—* Failure of mortgagor to pay the sum ordered by the decree—Rights of mortgagee on such failure—*Transfer of Property Act (IV of 1882)*, ss 92 and 93—In a suit by a mortgagor for redemption of a mortgage dated 17th March, 1891, a decree was passed in 1897, allowing him to redeem on payment of the mortgage-debt within a year from the date of the decree, but the decree did not contain any provision for foreclosure or sale in default of payment on the due date. The plaintiff having made default the defendant sued the Court for sale under s. 93 of 1882). *Hi* and that, as the decree did not contain any clause for foreclosure or sale, s. 93 of the Act was not applicable. *Held*, in second appeal, that the defendant (mortgagee) was entitled to the remedy given by s. 93, although the decree was not drawn up as prescribed by s. 92. The omission of the Court to draw up the proper decree under s. 92 did not deprive the mortgagee of the relief provided by s. 93. *MURALIDHAR v. PARSHARAM (1900)*

(*L. L. R., 25 Bom., 101*)

32. — *Limitation—Equity of redemption—* Limitation—adverse possession while period of redemption running—*Limitation Act (XV of 1877)*, s. 23.—An equity of redemption, in common

of the Limitation Act, although the physical

MORTGAGE—continued.**■ REDEMPTION—continued.****(a) RIGHT OF REDEMPTION—continued.**

possession of the property is not in question. An equity of redemption may with propriety be said to

LAL v. MANKI BIRI (1902). *6 C. W. N., 601*

33. — *Mesne profits—Mortgage-debt tendered and deposited in Court—Possession of mortgaged property obtained by mortgagee—Mesne profits—* Claim to mesne profits of mortgagee of Property—*the plaintiff defendant, with mortgage-deed pro should remain in possession and pay interest to the first defendant until the mortgage-debt was repaid.* In 1895 the first defendant sued the plaintiff on the mortgage, and a consent decree was passed, which directed that the defendant therein (the present plaintiff) should pay Rs 300 on the 7th October, 1897, and Rs 400 on the 7th October, 1898, and in case of default in either payment on the specified date possession of the land should be given up to the plaintiff therein (the present defendant). Default was made

19th March, 1898), the plaintiff (mortgagor), under s. 83 of the Transfer of Property Act (IV of 1882),

the mesne profits of the land from the date at which he deposited the Rs 700 in Court, i.e., the 19th March, 1898. The Court of first instance held that the plaintiff was entitled to redeem on payment of the Rs 700, but was not entitled to mesne profits. The lower Appellate Court held that, under s. 81 of the Transfer of Property Act (IV of 1882), the plaintiff was entitled to mesne profits from the date on which the first defendant took possession of the land (3rd April, 1898), and ordered redemption on payment by the plaintiff of the Rs 700 less the amount of such mesne profits. On second appeal, *Acid* (reversing the decree of the lower Appellate Court and

MORTGAGE—continued.**6. REDEMPTION—continued.****(a) RIGHT OF REDEMPTION—continued.**

restoring the decree of the Court of first instance)

defendant (mortgagee) by tendering and depositing

34.—Onus of proof—Sust for redemption—Burden of proof on plaintiff—Evidence—Proof of specific mortgage.—The plaintiff sued for redemption and to recover possession of certain lands, alleging that they had been mortgaged to the ancestors of the defendants about forty-five years before suit. The defendants, who were in possession, denied the mortgage. The Subordinate Judge found the mortgage proved, and passed a decree for redemption. On appeal, the Judge reversed the decree and dismissed the suit. He was of opinion that the plaintiff was bound to prove a specific mortgage made forty-five

35.—Pre-emption—Transfer of Property Act (IV of 1892), ss 54, 60—Mortgage with right

2100. The instrument of mortgage contained a

MORTGAGE—continued.**6. REDEMPTION—continued.****(a) RIGHT OF REDEMPTION—continued.**

entitled to redeem. *Per* SHEPHERD, J.—Under the covenant, and by reason of s. 54 of the Transfer of Property Act, defendant had no interest in the property. His right could be no other than a right to specific performance available, under s. 27 of the Specific Relief Act, against a transferee who had

pre-emption springs from contract, it rests only upon a covenant which does not run with the land, and

MORTGAGE—continued.**6. REDEMPTION—continued.****(a) RIGHT OF REDEMPTION—continued.**

tion in an usufructuary mortgage is an "intangible thing," within the meaning of s. 54 of the Transfer of Property Act, and its transfer by sale can be made only by registered instrument, even though its value may be less than Rs. 100. The equity of redemption in a simple mortgage may be tangible immovable property, and its sale can be effected, if its value be less than Rs. 100, without a registered instrument, by

had been in possession of the property as mortgagee could not save him from the operation of the law of limitation on his right to sue for specific performance of the contract of pre-emption. *Krishna Menon v. Kesavan, I L R, 20 Mad, 805*, referred to. Whether such a covenant for pre-emption transgresses the rule against perpetuities—*Quare. RAMASAMI PATTAR v. CHINNAN ASABI (1901)*

[I. L. R., 24 Mad, 448]

38.—Purchase of part of mortgaged property by a third party—Act IV of 1892 (Transfer of Property Act), s. 91—Purchase of part of the mortgaged property by a third party—Suit by mortgagees to recover from such purchaser a rateable proportion of the mortgage debt.—The plaintiffs, who were mortgagees of shares in four villages under a deed of simple mortgage, dated the 31st of March, 1883, brought a suit for sale of

Madan Lal, in execution of a simple money-decree against one of the mortgagors, attached the mortgaged shares in two of the villages, the subject of the

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obtained a decree, declaring that the property purchased by him was not liable in execution of the decree held by the mortgagees on their mortgage, but the mortgagees brought to sale the shares in the other two villages, one of which they purchased themselves, the other being sold to a stranger. The mortgagees then sued Madan Lal's representatives (he having meanwhile died), and, in this suit, having given credit for the sum realized by the sale of that

MORTGAGE—continued.**6. REDEMPTION—continued.****(a) RIGHT OF REDEMPTION—continued.**

part of the mortgaged property which had been brought to sale in execution of their decree, they asked for payment of the balance due to them, or rather of such portion thereof as was thought to be

on the other hand, were not entitled, to the detriment of Madan Lal or his representatives, to set up the plea that their mortgage was only valid as to a moiety of the property included in it, and thus to saddle the shares purchased by Madan Lal with a double portion of the mortgage debt; but the defen-

Dip Narain Singh v. Hira Singh (189), I. L. R., 13, 244—Where a suit for redemption has been instituted, and a decree for redemption has been passed therein, but not executed, a subsequent suit is not maintainable for the redemption of the same mortgage. VEDART-BATTI v. VALLABHA VALITA RAJA (P.B., 1902)

[I. L. R., 25 Mad, 300]

37.—Res judicata—Transfer of Property Act (IV of 1892), s. 92—Decree for redemption—Omission to execute—Maintainability of subsequent suit on same mortgage—Civil Procedure Code (Act XIV of 1882), ss. 13, 244—Where a suit for redemption has been instituted, and a decree for redemption has been passed therein, but not executed, a subsequent suit is not maintainable for the redemption of the same mortgage. VEDART-BATTI v. VALLABHA VALITA RAJA (P.B., 1902)

[I. L. R., 25 Mad, 300]

39.—Right of purchaser of portion of equity of redemption—Transfer of Property Act (IV of 1892), ss. 60, 85, 91, cl. (a)—"As interest or charge upon property," in sub-s. (a), if sufficient to

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redemption, if

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person having any interest in or charge upon the

property," in sub-s. (a) of s. 91 of the Transfer of

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of the equity of redemption, was not en. led,

against the will of the mortgagee, to redeem the

whole; he should be restricted to the redemption of

that portion only. *Nawab Armatuli Khan v*

Jowahir Sing (1870), 13 Moo. I. A., 404, at

MORTGAGE—continued.**G. REDEMPTION—continued.****(a) RIGHT OF REDEMPTION—continued.**

p 415, followed. Having regard to the provisions of s. 85 of the Transfer of Property Act as to necessary parties, the review granted after dismissal of suit to bring in the heir of one of the mortgagees as a party defendant was not improper. *GIRISH CHANDER DEY v. JYRAMONI DE* (1900)

[5 C. W. N., 83]

39.—Rights of incumbrancers inter se—*Act IV of 1882 (Transfer of Property Act)*, s. 85—Sales in execution of decrees separately obtained—Rights of auction purchasers—*Umrao Singh v. Ram Narain* (1900)

making the first mortgagee a party thereto, instituted a suit on his second mortgage, and, in 1887, obtained a decree, in execution of which the mortgaged property was put up to sale, and purchased by Kudrat-ullah for Rs. 500. Both the mortgages in question were registered. In 1896 Kudrat-ullah

gave. *Matadin Kasodhan v. Kasim Hussain* (1891), I. L. R., 13 All., 432; *Janki Prasad v. Kishen Das* (1894), I. L. R., 16 All., 478; and *Mehrbano v. Nadir Ali* (1900), I. L. R., 22 All., 212, distinguished. *Sheo Charan Lal v. Sheo*

MORTGAGE—continued.**6. REDEMPTION—continued.****(a) RIGHT OF REDEMPTION—concluded.**

to him from the first *Raja Kishendatt Ram v. R., 5 Calc.*, s. v. *Ananda* referred to.

[I. L. R., 25 All., 48]

41.—Suit for foreclosure—Loss of right to redeem—*Act IV of 1882 (Transfer of Property Act)*, ss. 67, 75, 85, 101—Mortgage—Foreclosure—Parties—Suit for foreclosure by prior mortgagee without making holder of subsequent registered mortgage a party.—A prior mortgagee (by conditional sale) brought a suit for foreclosure, and obtained a decree without making party to the suit a second mortgagee (by usufructuary mortgage) whose mortgage was registered. The second mortgagee, having unsuccessfully objected when the prior mortgagee proceeded to take possession through the Court, sued for and obtained a declaration that he was not bound by the foreclosure decree. The prior mortgagee thereupon sued the second mortgagee, praying that the latter, if he failed to redeem the prior mortgage, might be debarred of his right to redeem, and that in that case possession should be given to the plaintiff. Held that the contention of the second mortgagee, that all that the prior mortgagee was entitled to was to obtain possession on redeeming the second mortgage, could not be sustained, and that the prior mortgagee was entitled to the decree prayed for. *Venkata v. Kannam* (1882), I. L. R., 5 Mad., 124; *Krishnan v.*

42.—Time for redemption—*Act IV of 1882 (Transfer of Property Act)*, ss. 86 and 87—Redemption possible at any time until an order

Ram Krishna Chowdhary (1900), I. L. R., 27 Calc., 705, followed. *SALIG RAM v. MURADAN* (1903)

[I. L. R., 25 All., 231]

(b) REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM.

43.—Redemption after expiry of time—Period for redemption—Enlargement of time—Order refusing enlargement—Appeal—Civil Proce-

MORTGAGE—continued.

6. REDEMPTION—continued.

(b) REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM—continued.

dure Code (XIV of 1832), s. 244—Usufructuary mortgage—Foreclosure—Transfer of Property Act (IV of 1882), ss. 92 and 93.—In a suit for redemption of a usufructuary mortgage, the plaintiff, on 26th June, 1899, obtained a decree allowing six months for redemption. On the 14th November, 1900, the plaintiff filed a petition for a writ of mandamus to compel the defendant to execute the decree.

1900, he applied for execution of the decree. The lower Court rejected both applications, holding that, the time allowed by the decree having expired, the plaintiff had lost his right to redeem, and on that ground it also refused execution. On appeal by the plaintiff, the Judge reversed both orders, remanding the application for extension of time and granting the application for execution, on the ground that the six months for redemption should be computed from the date of the appellate decree. The defendant appealed to the High Court against both orders. *Held* that, as the plaintiff had not appealed against the order remanding the application for enlargement of the time for redemption, the High Court could not reverse that order and enlarge the time, but that the application for execution of the decree might be treated as an application for extension, and the order of the District Court might be upheld as one which extended the time by allowing execution. The order of the District Judge allowing execution was therefore confirmed, and the lower Court was directed to

to enlarge the time prescribed in a decree for redemption is appealable under s. 244 of the Civil Procedure Code. In cases of usufructuary mortgage, decrees for foreclosure should not be made. See ss. 92 and 93 of the Transfer of Property Act (IV of 1882). *RANGO v. BROMSHERT* (1901). **1 L. R. 28 Bom. 121**

MORTGAGE—continued.

A. REDEMPTION—continued.

(b) REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM—concluded.

to the Translator's Office for translation. On the 3rd February, 1902, the defendants gave notice to plaintiff to pay them the debt due on the mortgage intimating at the same time that they had taken steps to obtain probate. The plaintiff, in order to pay off the debt, immediately (12th February, 1902) agreed to sell the property to Haji Osman & Co. for £135,000, the sale to be completed by the 14th April, 1902. The plaintiff informed the defendants of the sale, and requested inspection of the deeds relating to the property. The sale, however, was not completed by the 14th April, 1902, in consequence (as the plaintiff alleged) of defendants not having obtained probate, and the purchasers (Haji Osman & Co) gave notice to the plaintiff that the purchase money was lying idle and that they would charge interest thereon. The plaintiff informed the defendant of this on the 20th April 1902. It appeared that the

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February, 1901. After the receipt of that notice the plaintiffs were at liberty to pay the amount of the mortgage.

obtaining the translation of the will on the 8th April, they could have obtained probate and been in a position to reconvey. PANDURANG KRISHNAJI v. DADABHOY NAWROJI (1902)

(c) MISCELLANEOUS.

45.—Interest—Interest on mortgage-debt—When interest ceases to run—Deposit by mortgagor under s. 83 of Transfer of Property Act (IV of 1882)—Duty of mortgagor making such deposit—Appointment of receiver—On the 10th October, 1932, the mortgagor deposited the sum of Rs. 22,000 in Court, under s. 83 of the Transfer of Property Act (IV of 1882), the sum of Rs. 22,000, which was the whole amount due on the mortgage for the then current year ending 21st October, 1932. The mortgagee was then dead, and his son and heir was a minor, and it was therefore necessary that a guardian *ad litem* should be appointed to receive notice of the deposit as required

44. ————— *Death of mortgagee—*
Notice by executors of mortgagee to mortgagor
to redeem within three months—Sale of mortgaged
property by mortgagor in order to pay off mortgage
debt—No probate obtained by executors, and
sale, therefore, not completed—Mortgage debt not
paid within period of notice—Negligence of
executors—Interest on mortgage ceased to run on
expiration of notice to redeem—In 1898 the
plaintiff mortgaged certain property to one Shapurji
Sukhia for Rs30,000 with interest at 7½ per cent. per
annum, the debt to be repayable in one year.
Shapurji died in 1901, and the defendants were the
executors of his will, which had been lodged for safe
custody with the Registrar of Assurances. On 8th
January, 1902, the defendants requested the
Registrar to lodge the will in the High Court in
order that they might obtain probate of it. It was
duly lodged on the 24th January, 1902, and was sent

MORTGAGE—continued.**6. REDEMPTION—concluded.****(c) MISCELLANEOUS—concluded.**

by s. 53. Steps were accordingly taken to appoint

debtor, refusing to give the mortgage interest, holding that "on making the deposit the plaintiff (mortgagor) had done all that had to be done by him" to enable the defendant to take the deposit out of Court as provided by s. 84 of the Transfer of Property Act (IV of 1882), and that therefore interest had ceased to run. On appeal to the High Court: *Held* (reversing the decree) that the defendant

(plaintiff) had completely performed his part until

48.—Subsequent loan—Sale of equity of redemption—Further loan secured on same property after the sale—Purchaser of equity of redemption not bound to discharge subsequent loan before he can redeem—Act IV of 1882 (Transfer of Property Act), s. 60.—A mortgagor who has sold the equity of redemption in property mortgaged by him cannot afterwards charge such property with a further debt so as to render the

7. FORECLOSURE**(a) RIGHT TO FORECLOSURE**

47.—Mortgage by conditional sale—Prior and puisne mortgagees—Payment by puisne mortgagee,

by puisne mortgagees for foreclosure—Act IV of

MORTGAGE—continued.**7 FORECLOSURE—continued.****(a) RIGHT TO FORECLOSURE—concluded.**

1882 (Transfer of Property Act), s. 74—Civil

Proceedings—*Case*—*In*—*the*—*year*—*1880*—*Fatch*
of a
Kunj
hand

executed a second mortgage of the same village, also by way of conditional sale, in favour of Bansudhar and Anant Ram. In October, 1891, Anant Ram transferred his interest in the second mortgage to the original mortgagor, and Gaya Prasad, were made defendants. On the same date Gaya Prasad instituted

the same proceedings as the first case.

48.—*Case*—*the*—*year*—*1880*—*Fatch*
of a
Kunj
hand

48.—Foreclosure decree—Transfer of Property Act (IV of 1882), ss 66, 67—Stay of proceedings.—S 87 of the Transfer of Property Act does not allow the Court to postpone the date of payment on the application of an outsider. The provision regarding the power of the Court to postpone the date of payment relates to matters between the mortgagor and mortgagee. That section does not

(1902) 6 C. W. N., 654

MORTGAGE—continued**1. FORECLOSURE—continued****(1) DEMAND AND NOTICE OF FORECLOSURE.**

48.—*Transfer of Property Act (IT) of 1882*
s. 57—*Question arises as to the order of sale*
of property.—*Notes*.—S. 57 of the Transfer of
Property Act does not require that any notice should
be given to the judgment-debtor before the order
about the foreclosure is made. *TARA DEVI GHOSE*
v. *KAMINI DAS* (1901) . I. L. R. 29 Cal. 644

2. ACCOUNTS.

50.—*Interests in possession—Retention of*
—*Interest in accounts*.—A mortgagee is liable to
render must prove how much of the debt and
interest has been repaid. The duty of a mortgagee
in possession is to keep a full true and accurate
account of the actual receipts and disbursements.
In taking accounts between a mortgagee and mort-
gagor, the latter must decide as to the accuracy or
otherwise of the accounts presented to him by the
mortgagee, and it is upon those accounts and the
evidence before him in the case that he must find the
amount payable w. redemption. *KUTUBALAH*
v. *KASHMIR* (1902) . I. L. R. 29 Bom. 565

3 DISCHARGE OF MORTGAGE

51.—*Right of mortgagee—Right of mortgagor*
—*Payment of mortgagee to one of the heirs*.—
Where property is mortgaged to a person who
subsequently dies leaving two or more heirs jointly
entitled to the estate, payment made by the mort-
gagor of the amount due on the mortgage, to one of
those heirs, without the concurrence of the rest, does
not amount to a valid discharge of the mortgage.
SHAMJI ADAT KES v. *SHAMJI ADAT FAKIR*
(1895) . I. L. R. 27 Bom. 293

MORTGAGE-DEBT.**—contribution—**

52.—*Transfer of Property Act* s. 52
(8 C. W. N. 553)

—omission to set up mortgage bond—

53.—*See JOURNAL—MATTERS IN COURT*
(I. L. R. 24 AL. 429)

**—payment of to one of the heirs of mort-
gagor—**

54.—*Mortgage—Discharge of Mort-
gage* . I. L. R. 27 Bom. 392

MORTGAGEE.

See MORTGAGE.

—lien of—

55.—*Sale for arrears of interest—
Debtors to stay sale*
(I. L. R. 30 Cal. 794)

—rent due to—

56.—*Transfer of Property Act* s. 61
(8 C. W. N. 453)

MORTGAGOR AND MORTGAGEE.

See MORTGAGE.

See LEASE—Construction of
(8 C. W. N. 572)

See SUCCESSION—ENTITLEMENT OF SUCCESSION.
(I. L. R. 30 Cal. 1060)

MOTHER.

57.—*RIGHT LAW—ADULTER—ADULT-
ERY BY MOTHER*

58.—*MATERNAL LAW—GUARDIAN*
(I. L. R. 29 Cal. 473)

MOTIONS.

59.—*Practices—CIVIL CASE—EXERCISE OF
EXERCISE* . I. L. R. 28 Cal. 572

—obtaining decree on—

60.—*Practices—CIVIL CASE—MOTION*
(I. L. R. 28 Bom. 70)

MOVABLE PROPERTY.

61.—*MATERNAL LAW—EXTORTION*
(I. L. R. 24 AL. 190)

MURADHAI TESTER.

See TESTER—MURADHAI TESTER.

MULTIFARIOUSNESS.

See JUDICIAL OFFICE OF ACTION

62.—*Practices—Form and Content of
Practices—Cases of Action*

(8 C. W. N. 553)

63.—*See PRACTICES FOR* . 8 C. W. N. 553

—*Miscellaneous of parties and causes of
action—Civil Procedure Code (Act III of 1908)*
s. 20 and 21—*Suit by a purchaser of property*
—*in possession, or a person who is not*
—*him, as also against the vendor for the return of
the purchase money, whether immediately or
a suit brought by the plaintiff for recovery of
possession of land against defendant No. 1 (the
person by whom the plaintiff was deposed)* after
declaration of his right as purchaser from def-
endant No. 2: for an order for the registration of
the plaintiff's name under the Land Registration Act
(Act VII of 1870); for recovery of the said
first instalment of the purchase money from the defendant
No. 2 in case the plaintiff's claim against defendant
No. 1 failed: the defence was that the suit was bel-
lowed by number of parties and causes of action. *See*
—*that the suit was not barred by number of parties and
causes of action. HANOVER BANK v. HANOVER
BANK (1901) . I. L. R. 28 Cal. 111 and Andie
Claverty v. Andie Kates Shethbhai (1901)*

MULTIFARIOUSNESS—concluded.

*J. L. E., 8 Calc., 863, referred "to. SIKASTU HUG
Khan v. ABDUL RAHMAN (1902)
[I. L. R., 29 Calc., 257;
s.c., 8 C. W. N., 300*

MUNICIPAL ACTS.

*See BENGAL MUNICIPAL ACT
See BOMBAY CITY MUNICIPAL ACT.
See BOMBAY DISTRICT MUNICIPAL ACT—
(BOM ACT VI OF 1873);
(" " II OF 1894);
(" " III OF 1901).
See CALCUTTA MUNICIPAL CONSOLIDATION
ACT.
See CALCUTTA MUNICIPAL ACT
See MADRAS CITY MUNICIPAL ACT
See MADRAS DISTRICT MUNICIPALITIES
ACT
See NORTH-WESTERN PROVINCES AND
ODISH MUNICIPALITIES ACT*

MUNICIPAL BOARDS.

*—restriction on power of, to make by-
laws—
See NORTH-WESTERN PROVINCES AND
ODISH MUNICIPALITIES ACT (N. AND O.
ACT I OF 1900), s. 128
[I. L. R., 24 All., 439*

MUNICIPAL COMMISSIONERS

*—effect of vesting street in—
See PEBLIS ROAD, HIGHWAY, STREET OR
THOROUGHFARE
[I. L. R., 25 Mad., 635*

MUNICIPAL CORPORATION.

*See CALCUTTA MUNICIPAL CONSOLIDATION
ACT (II OF 1883), ss. 247, 250, 427.
[I. L. R., 30 Calc., 317*

MUNICIPAL TAX.

See TAX

MUNSIIF.

—jurisdiction of—

*See RENT, SUIT FOR—BY WHAT COURT
TRIABLE [I. L. R., 30 Calc., 453
1.—Power of District Munsif on revision
—Village Courts Act (Madras Act I of 1889),
s. 73—Revision by District Munsif of Village
Court's proceedings—Payment under protest by a*

MUNSIIF—concluded.

*—jurisdiction of—concluded.
defendant to a Village Munsif to avoid attach-
ment and sale under a decree—Order by District
Munsif, setting aside all proceedings, and for
refund by Village Munsif—Legality of order—
By s. 73 of the Madras Village Courts Act,
1889, the District Munsif may set aside the decree
or order of a Village Munsif on certain grounds
A Village Munsif, having passed a decree against a
defendant in a suit before him, attached, in pursu-
ance thereof, property belonging to the defendant,
who thereupon paid the amount to the Village
Munsif under protest. Defendant then applied
under s. 73 to the District Munsif, who set aside the
decree and attachment and declared them to be void,
and ordered the Village Munsif to refund the money
he had recovered from the defendants. Held that
the order, in so far as it related to a refund of
the money by the Village Munsif, was made without
jurisdiction, and must be set aside, without prejudice
to the rights (if any) of the defendant to proceed
against the Village Munsif for damages suffered
by reason of his misconduct. Under s. 73, a
District Munsif has power only to set aside the
decree or order complained of, and cannot make an
order for payment against the Village Munsif, the
section applying to proceedings between litigants.
PALANI GOUDAN v. KUPPANDA GOUDAN (1900)
[I. L. R., 24 Mad., 335*

*2.—Small cause jurisdiction—Provincial
Small Cause Court—Act IX of 1887, s. 18, 32
(2)—Munsif invested with Small Cause jurisdic-
tion—Extension of jurisdiction—Transfer of
cases on file on regular side to small cause side—
—A District Munsif, who had small cause jurisdic-
tion up to Rs. 100, had, on his file on the regular side of
his Court, suits of a small cause nature for amounts
between Rs. 100 and Rs. 200, some of which were partly
tried. His small cause jurisdiction was then extended
to Rs. 200, whereupon he transferred the cases in
question to his small cause file, and tried and disposed
of them as small causes. Held that the transfer and
trial were not in accordance with law. HARI
KAMATTA v. HARI VENEKATTA (S.B., 1903)
[I. L. R., 28 Mad., 212*

MURDER.

*See EVIDENCE—CRIMINAL CASES—CONSID-
ERATION OF, AND MODE OF DEALING
WITH, EVIDENCE [I. L. R., 30 C. W. N., 921
See ISSUES [I. L. R., 28 Calc., 613
" " 29 Calc., 493*

*—Grave and sudden provocation—Accused
—Wife—Intrigue—Culpable homicide not amount-
ing to murder—Penal Code (Act XLV of 1860),
ss. 300, 302 and 304—The deceased H lived in the
house of the accused A. H contracted an intimacy
with L, the wife of A, in consequence of which he
was turned out of the house. Subsequently, on a
certain night H, at the invitation of L, went to the
house of A, and was taken inside by her. There-
upon A and the other accused, relatives of his, seized*

MURDER—concluded.

H. carried him off to some distance, beat him, broke his arms and a leg, and left him. Three days later, *H* died in consequence of the injuries. All the accused were convicted under s. 302 of the Penal Code and sentenced to transportation for life. *Held* that the circumstances under which *H* was found in the house of *A* on the night of the crime were sufficient to cause grave and sudden provocation to *A* and his relatives, within the meaning of s. 300, Excep. (1), of the Penal Code, and that the provocation was of a nature that would continue to influence the feelings of the accused for a considerable period after *H* was caught in the house in the company of *L*. Conviction altered to one under s. 304 of the Penal Code, and sentence reduced.

ABALU DAS v. KING-EMPEROR (1901)

[*L. L. R.*, 28 Calc., 571;
a.c., 5 C. W. N., 708]

MUTWALLI.

See MAHOMEDAN LAW—ENDOWMENT.

MYSORE.

—jurisdiction of Justice of the Peace in—

See FOREIGN JURISDICTION ACT, 1879,
ss. 4, 6 AND 8.

[*L. L. R.*, 28 Mad., 607]

N**NATIVE INDIAN SUBJECTS.**

—legal status of—

See FOREIGN COURT, JUDGMENT OF.
[5 C. W. N., 741]

—offence committed by, out of British India—

See JURISDICTION OF CRIMINAL COURT
—GENERAL JURISDICTION.

[*L. L. R.*, 24 All., 268]

NATIVE OF INDIA.

—application of Negotiable Instruments Act, 1881, to—

See NEGOTIABLE INSTRUMENTS ACT.
[*L. L. R.*, 28 Mad., 528]

NATIVE RULER.

—suit by—

See CIVIL PROCEDURE CODE, s. 432.
[*L. L. R.*, 25 All., 635]

NATIVE STATE.

—jurisdiction of Justice of the Peace in—

See FOREIGN JURISDICTION ACT, 1879
ss. 4, 6 AND 8.

[*L. L. R.*, 28 Mad., 607]

NATURE OF TENANCY.

See LANDLORD AND TENANT—NATURE OF TENANCY.

NECESSITY FOR ALIENATION.

See HINDU LAW—

ALIENATION—ALIENATION BY WIDOW—

ALIENATION FOR LEGAL NECESSITY;

WHAT CONSTITUTES LEGAL NECESSITY;

ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS—MANAGER.

[*L. L. R.*, 29 Calc., 787]

NEGLIGENCE.

See HUNDI—ENDORSEMENT.

[5 C. W. N., 513]

See MINOR—REPRESENTATION OF MINOR IN SUITS. *L. L. R.*, 29 Calc., 735

See PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL. 6 C. W. N., 429

See RAILWAY COMPANY.

See RASH AND NEGLIGENCE ACT.

[6 C. W. N., 378]

—Negligent act by Government official—Absence of malicious intention—Premature closing of water-supply by mistake of Revenue officer—Right of action—Parties—Plaintiff, a Government *raiyat*, occupied lands the cultivation of which depended upon a supply of water from a Government *raiyat* which was not open until

causing damage to plaintiff's crops. It was part of defendant's duty to see that the channel was closed at a certain date, but he had, on this occasion, closed it too soon by mistake. Plaintiff sued defendant for the damages which he had thereby suffered. *Held* that, inasmuch as plaintiff's right to a supply of water was founded on contract, a right of action, in case of the water being improperly withheld, might exist as against the Government, but that there was none as against the defendant, by whom no legal injury had been committed. *Semble* that, if malicious intention on the defendant's part had been proved, plaintiff might have had a cause of action. *Krishna Aggar v. Venkataswella Madali*, 7 M. H. C. R., 60, and *Ramachandra v. Narayanasami*, *L. L. R.*, 16 Mad., 533, referred to. *CHINNAPIA MEDAKKAL v. SIKKA NAIRAN* (1900)

[*L. L. R.*, 24 Mad., 30]

NEGOTIABLE INSTRUMENTS.

See PROMISSORY NOTES.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—NEGOTIABLE INSTRUMENTS

—Summary procedure on—*Civil Procedure Code (Act XIV of 1892), Ch XXXIX—Leave to defend, extension of time to apply for—Limitation Act (XV of 1877), s 4, and Sch II, Art. 159*—In a suit under Ch. XXXIX, Civil Procedure Code, the Court has no power, after the time fixed by the summons for obtaining leave to appear and defend has expired, to extend the time. *Quare*—whether the Court has power to grant an extension of time if an application for such extension be made before the time fixed by the summons has expired. *QAZI MAHMUDAB ROHMAN v. SARAT CHANDRA DUTT* (1900) . . . 5 C. W. N., 259

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881).

See HUNDI

—Local usage—*Applicability of Act XXVI of 1881 to natives of India*—The provisions of the Negotiable Instruments Act are strictly applicable to natives. Where any local usage is relied on under s. 1 of the Act, it should be alleged and established by the party who relies upon it. *JAMBU CHETTI v. PALANIAPPA CHETTIAR* (1902)

[I. L. R., 28 Mad., 526]

—s. 30—

See HUNDI—NOTICE OF DISHONOUR.

[I. L. R., 30 Calc., 977]

—s. 61—

See PROMISSORY NOTES—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.

[I. L. R., 24 Mad., 854]

—s. 83—

See HUNDI—NOTICE OF DISHONOUR.

[I. L. R., 30 Calc., 977]

—s. 94—

See HUNDI—NOTICE OF DISHONOUR.

[I. L. R., 28 Mad., 626]

—s. 98—

See HUNDI—NOTICE OF DISHONOUR.

[I. L. R., 30 Calc., 977]

—Cl. (c)—*Damage suffered by drawer by omission to give notice of dishonour—Omnis of proof—Partnership between drawer and acceptor—Acceptor also drawer—Discharge of acceptor by*

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)—concluded.

—s. 98—concluded.

the endorsee to establish that the drawer could not have suffered damage by the omission. The mere fact that the drawer and acceptor of a bill are partners does not give rise to the presumption that they are partners in respect of the drawing of the bill, or that the bill was drawn by one of them on behalf of both. In such a case the acceptor is not also a drawer, so as to render notice of dishonour unnecessary under s. 98 (c). The fact that the acceptor of a bill is not liable (because he was joined

NEPAL.

—Whether in India—*Criminal Procedure Code (Act V of 1893), s. 503—Evidence taken on commission in Nepal—Conviction under s. 411, Indian Penal Code, on such evidence—General Clauses Act (X of 1897), s. 8, cl. (27)—Burden of proving if Nepal is in India*—In a case where a commission was issued under s. 503, Criminal

Procedure Code, s. 8, cl. (27), lies on the party who alleges that the evidence taken there is proper evidence, and, on their failing to do so, the conviction must be set aside. *Quare*—whether Nepal is in India. *SANGHIE LAMA v. ENTERPRISE* (1904)

[7 C. W. N., 635]

NEW TRIAL.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—NEW TRIAL.

See WITHDRAWAL OF SUIT.

[I. L. R., 29 Calc., 239]

—in criminal case—

See CHARGE TO JURY—MISDIRECTION.

[I. L. R., 29 Calc., 783]

See CRIMINAL PROCEDURE CODE, s. 403.

[8 C. W. N., 840]

See EVIDENCE—CRIMINAL CASES—CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE . . . 8 C. W. N., 921

See REVISION—CRIMINAL CASES—VERDICT OF JURY, AND MISDIRECTION.

[I. L. R., 30 Calc., 485]

—Conditions of.—Where, no case of fraud or surprise having been made out, a party to the suit sought for a new trial on the ground of discovery after judgment of an important document, which was

MURDER—concluded.

H, carried him off to some distance, beat him, broke his arms and a leg, and left him. Three days later, *H* died in consequence of the injuries. All the accused were convicted under s. 302 of the Penal Code and sentenced to transportation for life. *Held* that the circumstances under which *H* was found in the house of *A* on the night of the crime were sufficient to cause grave and sudden provocation to *A* and his relatives, within the meaning of s. 300, Excep. (1), of the Penal Code, and that the provocation was of a nature that would continue to influence the feelings of the accused for a considerable period after *H* was caught in the house in the company of *L*. Conviction altered to one under s. 304 of the Penal Code, and sentence reduced.

ABALU DAS v. KING-EMPEROR (1901)

[*L. L. R.*, 28 Cal., 571;
a.c., 5 C. W. N., 708]

MUTWALLI.

See MAHOMEDAN LAW—ENDOWMENT.

MYSORE.

—jurisdiction of Justice of the Peace in—

See FOREIGN JURISDICTION ACT, 1879,
ss. 4, 6 AND 8

[*L. L. R.*, 28 Mad., 607]

N**NATIVE INDIAN SUBJECTS.**

—legal status of—

See FOREIGN COURT, JUDGMENT OF
[5 C. W. N., 741]

—offence committed by, out of British India—

See JURISDICTION OF CRIMINAL COURT
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[*L. L. R.*, 24 All., 256]

NATIVE OF INDIA.

—application of Negotiable Instruments Act, 1881, to—

See NEGOTIABLE INSTRUMENTS ACT.
[*L. L. R.*, 28 Mad., 528]

NATIVE RULER.

—sue by—

See CIVIL PROCEDURE CODE, s. 432.
[*L. L. R.*, 25 All., 635]

NATIVE STATE.

—jurisdiction of Justice of the Peace in—

See FOREIGN JURISDICTION ACT, 1879
ss. 4, 6 AND 8.

[*L. L. R.*, 28 Mad., 607]

NATURE OF TENANCY.

See LANDLORD AND TENANT—NATURE OF TENANCY.

NECESSITY FOR ALIENATION.

See HINDU LAW—

ALIENATION—ALIENATION BY WIDOW—

ALIENATION FOR LEGAL NECESSITY;

WHAT CONSTITUTES LEGAL NECESSITY;

ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS—MANAGER

[*L. L. R.*, 29 Cal., 797]

NEGLIGENCE.

See HUNDI—ENDORSEMENT.

[5 C. W. N., 313]

See MINOR—REPRESENTATION OF MINOR IN SUITS. *I. L. R.*, 29 Cal., 735

See PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL. 6 C. W. N., 429

See RAILWAY COMPANY.

See RASH AND NEGLIGENT ACT.

[5 C. W. N., 378]

—Negligent act by Government official—
Absence of malicious intention—Premature closing of account by Government officer

causing damage to plaintiff's crops. It was plaintiff's duty to see that the channel was closed at a certain date, but he had, on this occasion, closed it too soon by mistake. Plaintiff sued defendant for the damages which he had thereby suffered. *Held* that, inasmuch as plaintiff's right to a supply of water was founded on contract, a right of action, in case of the water being improperly withheld, might exist as against the Government, but that there was none as against the defendant, by whom no legal injury had been committed. *Semle* that, if malicious intention on the defendant's part had been proved, action might lie. *Aristas v. R.*

NEGOTIABLE INSTRUMENTS.

See PROMISSORY NOTES.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—NEGOTIABLE INSTRUMENTS.

time fixed by the summons for obtaining leave to appear and defend has expired, to extend the time.
Quare—whether the Court has power to grant an

NEGOTIABLE INSTRUMENTS ACT
(XXVI OF 1881).

See HUNDI

—*Local usage*—*Applicability of Act XXVI of 1881 to natives of India*—The provisions of the Negotiable Instruments Act are strictly applicable to natives. Where any local usage is relied on under s. 1 of the Act, it should be alleged and established by the party who relies upon it. *JAMBU CHITTY v. PALANIAPPA CHETTIAR* (1902)

[I. L. R., 28 Mad., 536]

—s. 30—

See HUNDI—NOTICE OF DISHONOUR
[I. L. R., 30 Calc., 977]

—s. 51—

See PROMISSORY NOTES—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.
[I. L. R., 24 Mad., 654]

—s. 93—

See HUNDI—NOTICE OF DISHONOUR
[I. L. R., 30 Calc., 977]

—s. 94—

See HUNDI—NOTICE OF DISHONOUR.
[I. L. R., 28 Mad., 526]

—s. 98—

See HUNDI—NOTICE OF DISHONOUR.
[I. L. R., 30 Calc., 977]

—*Cl. (c)*—*Damage suffered by drawer by omission to give notice of dishonour*—*Oaus of proof*—*Partnership between drawer and acceptor*—*Acceptor also drawer*—*Discharge of acceptor by limitation*—*Effect on liability of drawer*—When the endorsee of a bill sues the drawer to recover the amount due under the bill, and relies upon s. 98 (c) of the Negotiable Instruments Act to excuse the omission to give notice of dishonour, the *onus* lies on

NEGOTIABLE INSTRUMENTS ACT
(XXVI OF 1881)—concluded.

—s. 98—concluded.

the endorsee to establish that the drawer could not have suffered damage by the omission. The mere fact that the drawer and acceptor of a bill are

NEPAL.

—*Whether in India*—*Criminal Procedure Code (Act V of 1895), s. 503*—*Evidence taken on commission in Nepal*—*Conviction under s. 411, Indian Penal Code, on such evidence*—*General Clauses Act (X of 1897), s. 3, cl. (27)*—*Burden of proving if Nepal is in India*—In a case where a commission was issued under s. 503, Criminal

NEW TRIAL.

See SMALL CASE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—NEW TRIAL.

See WITHDRAWAL OF SUIT.
[I. L. R., 29 Calc., 239]

—in criminal case—

See CHARGE TO JURY—MISDIRECTION.
[I. L. R., 29 Calc., 782]

See CRIMINAL PROCEDURE CODE, s. 403.
[8 C. W. N., 640]

See EVIDENCE—CRIMINAL CASES—CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE. 8 C. W. N., 931

See REVISION—CRIMINAL CASES—VERDICT OF JURY, AND MISDIRECTION.
[I. L. R., 30 Calc., 485]

—*Conditions of*—Where, no case of fraud or surprise having been made out, a party to the suit sought for a new trial on the ground of discovery after judgment of an important document, which was

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881)—continued

—Ch. II (ss. 4 to 55A) and s. 93—

—Landholder and tenant—Suit for rent—Plea

having no effect beyond that year on the rent payable for the holding. In a suit for arrears of rent under s. 91 (a) of the North-Western Provinces Rent Act, 1881, the defendant proved a local custom, whereby a tenant was entitled to a proportionate deduction from the rent for any year for such lands as were in that year, owing to fluvial action, unculturable

abatement of rent in the sense of Ch. II, namely, a reduction permanently or for an indeterminate period of the rent payable for his holding, but only a remission or deduction from such rent for a particular year and in respect of such portions of the holding as were unculturable in that year, and inasmuch as no such remission could have been obtained

—s. 10—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—N-W PROVINCES
[I. L. R., 23 All., 481]

—s. 23—

—Suspension of revenue, and consequent suspension of rent—Lessee entitled to the benefit of suspension of rent—Held that, when the Local Government, under s. 23 of the North-Western Provinces Rent Act, suspends payment of revenue, and when suspension of rent has in consequence been ordered, a lessee is entitled to the benefit of the latter suspension. MADAN MOHAN LAL v. DILDAR HUSAIN (1902). I. L. R., 24 All., 465

—s. 31—

See LANDLORD AND TENANT—ABANDONMENT, RELINQUISHMENT OR SURRENDER OF TENANCY. I. L. R., 25 All., 77
See MORTGAGE—POSSESSION UNDER MORTGAGE. I. L. R., 24 All., 538

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881)—continued.

—ss. 42, 95 and 208—

—Landholder and tenant—Ejectment—Appraisal of tenant's crops—Assignment of right to receive price of crops—Mode in which such price can be realized—Jurisdiction—Civil and Revenue Courts—Actionable claim—Act IV of 1882, s. 135—

of the assessment,—(1) that the assignee's proper remedy was by suit in a Court of Revenue, and not by application to execute the order awarding compensation, (2) that the suit was not a suit of the nature cognizable by a Court of Small Causes; and (3) that the assignment to the plaintiff after the award had

—s. 43—

—Landholder and tenant—Suit to recover rent in kind—Duty of officer appointed to divide produce or appraise standing crops—Res judicata—Where, under s. 43 of the North-Western Provinces Rent Act, 1881, an officer is appointed to divide produce, or estimate or appraise a standing crop as between a landholder and his alleged tenant, such officer is not empowered to come to any decision as to

GHULAM MUHAMMAD (1903)

[I. L. R., 25 All., 282]

—s. 56—

—Landholder and tenant—Distrain—Hypothecation for rent or produce of land—Held, on a construction of s. 56 of Act XII of 1881, that, when the rent of a tenant is in arrears, the landlord is entitled to distrain any crop growing on the tenant's holding, no matter by whom that crop was sown. GURJAN SINGH v. BULDEO KAHAR (1872), 4 N. W. P. H. C. Rep., 76, and Fatima Begum v. HAZI (1887), I. L. R., 9 All., 211, referred to. MEH SINGH v. TIKU RAM (1901)

[I. L. R., 24 All., 127]

—s. 93—

See ante, CH II AND S. 93

See INTEREST—MISCELLANEOUS CASES—ARREARS OF REVENUE.
[I. L. R., 23 All., 5]

NEW TRIAL—concluded.

in the possession of the opposite party, but of which the party first named had neglected to obtain discovery before judgment: *Held* that a new trial should not lightly be granted, and in the present case it ought not to be granted. *TURNBULL & Co. v. DUVAL* (P.C., 1902) . . . 6 C. W. N., 809

NEXT FRIEND.

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 29 Cal., 735
" 30 Cal., 1021

See PRACTICE—CIVIL CASES—NEXT FRIEND.

NON-APPEARANCE.

—effect of—

See APPEAL—

DEFAULT IN APPEARANCE;

EX PARTE CASES;

See CIVIL PROCEDURE CODE—

s. 99;

s. 100;

ss. 103 AND 105;

s. 108;

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.

See CONTEMPT OF COURT—PENAL CODE, s. 174 . . . 5 C. W. N., 181

See PRACTICE—CIVIL CASES—NON-APPEARANCE OF PLAINTIFF

See RECOGNIZANCE TO APPEAR.
[I. L. R., 30 Cal., 107]

NON-ATTENDANCE.

—of juror—

See JURY—JURY IN SESSIONS CASES.
[6 C. W. N., 887]

NON-DELIVERY.

See CONTRACT.

NORTH-WESTERN PROVINCES LAND-REVENUE ACT (XIX OF 1873).

—s. 102—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—NORTH-WESTERN PROVINCES.
[I. L. R., 24 All., 163]

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See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION . . . I. L. R., 23 All., 391

NORTH-WESTERN PROVINCES LAND-REVENUE ACT (XIX OF 1873) —concluded.

—ss. 113, 114—

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION.
[I. L. R., 25 All., 277]

—s. 114—

See APPEAL—NORTH-WESTERN PROVINCES ACTS . I. L. R., 25 All., 141

—s. 148—

See INTEREST—MISCELLANEOUS CASES—ARREARS OF REVENUE.
[I. L. R., 23 All., 5]

—ss. 203, 205B—

See MINOR—LIABILITY OF MINOR OR, AND RIGHT TO ENFORCE, CONTRACTS.
[I. L. R., 23 All., 288]

—s. 205B—

See GUARDIAN—DISQUALIFIED PROPRIETORS . . . I. L. R., 24 All., 138

—s. 241—

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION.
[I. L. R., 25 All., 19]

—s. 241—

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION . . . I. L. R., 23 All., 291

—s. 241, cl. (1)—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS.
[I. L. R., 25 All., 527]

NORTH-WESTERN PROVINCES LOCAL RATES ACT (III OF 1878).

—Act IX of 1889 (*Kanungo and Patwaris Act*)—*Cess*—Assignment of Government revenue—Assignees not entitled to *cesses*—*Held* that an assignee of the Government revenue assessed on a *particular mill* was not entitled to *cesses* on *other mills*.

[I. L. R., 23 All., 505]

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881).

—s. 1—

See JURISDICTION—SUITS FOR LAND—RENT . . . I. L. R., 23 All., 292.

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1891)—continued.

—s. 33—continued.

See JURISDICTION—SUITS FOR RENT—
RENT . . . I. L. R., 23 ALL, 252

—Cl. (a)—Suit for rent—*Chandani v. S. S. of India* (1897) (Indian Population Act, 1897, s. 2 of the Indian Population Act, 1897, applies to a suit under s. 33 (a) of the North Western Provinces Rent Act, 1891. *Muhammad Hassan v. K. S. for Rent* (1897). I. L. R., 23 ALL, 252. *Chandani v. S. S. of India* (1897). I. L. R., 23 ALL, 252.

—s. 33—

See also, s. 32, 23 AND 252.
See also, s. 32, 23 AND 252.
See also, s. 32, 23 AND 252.
See also, s. 32, 23 AND 252.

—s. 33—

See also, s. 32, 23 AND 252.
See also, s. 32, 23 AND 252.

—s. 33—

See also, s. 32, 23 AND 252.
See also, s. 32, 23 AND 252.

—s. 33—

See also, s. 32, 23 AND 252.
See also, s. 32, 23 AND 252.

—s. 33—

See also, s. 32, 23 AND 252.
See also, s. 32, 23 AND 252.

—s. 33—

See also, s. 32, 23 AND 252.
See also, s. 32, 23 AND 252.

NORTH-WESTERN PROVINCES AND ODISHA RANUNGOS AND PATWARI ACT (X OF 1891).

—s. 1 (1) of 1891 (Local Rates Act)—*See*
—Assignment of Government revenue—*Assignment and*
—suit for rent—*Held* that an assignment of the
—Government revenue cannot be a certain profit and
—not entitled to receive interest and local rates
—from the assignor for such rates and comes here to be
—paid by the assignor to the Government. *Kano*
—*and Nambal Singh* (1901). I. L. R., 23 ALL, 203.

NORTH-WESTERN PROVINCES AND ODISHA MUNICIPALITIES ACT (N. & O. ACT I OF 1900).

—s. 125—

—s. 125(a), (1)—Municipal Board, power of
—By-law—By-law held to be unreasonable, and

NORTH-WESTERN PROVINCES AND ODISHA MUNICIPALITIES ACT (N. & O. ACT I OF 1900)—continued.

—s. 125—continued.

—s. 125(a), (1)—The English law as to the
—reasonableness of by-laws being reasonable is applicable to
—by-laws framed in the exercise of their statutory
—power by Municipal Boards in India. The Municipal
—Board of Nambal Singh passed a by-law, under the
—power conferred upon it by s. 125, cl. (c), of
—N. & O. Act I of 1900, in the following words:
—“No roads, whether bearing loads or not,
—shall be kept in attendance in the market, and
—no person shall use the Upper North Mall (one
—of the principal roads running along the north side
—of the town) at any time.” *Held* that
—the by-law was unreasonable, and the Court
—declined to give effect to it. *Pranab v. Bar*
—*and Nambal Singh* (1901). I. L. R., 23 ALL, 439.

—s. 125—

See also, s. 125, 23 AND 439.
See also, s. 125, 23 AND 439.

—s. 125—

See also, s. 125, 23 AND 439.
See also, s. 125, 23 AND 439.

—s. 125—

See also, s. 125, 23 AND 439.
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NORTH-WESTERN INDIA CANAL AND DRAINAGE ACT (VIII OF 1879).

—s. 45—

See JURISDICTION OF CIVIL COURT—RE
AND REVENUE SUITS
I. L. R., 23 ALL, 51.

—s. 45—

See also, s. 45, 23 AND 51.
See also, s. 45, 23 AND 51.

—s. 45—

See also, s. 45, 23 AND 51.
See also, s. 45, 23 AND 51.

—s. 45—

See also, s. 45, 23 AND 51.
See also, s. 45, 23 AND 51.

—s. 45—

See also, s. 45, 23 AND 51.
See also, s. 45, 23 AND 51.

—s. 45—

See also, s. 45, 23 AND 51.
See also, s. 45, 23 AND 51.

—s. 45—

See also, s. 45, 23 AND 51.
See also, s. 45, 23 AND 51.

NOTICE—continued.

—constructive—concluded.

See TRANSFER OF PROPERTY ACT, s 3—
"NOTICE" . . . 7 C. W. N., 11

—duty of serving, when on insolvent and when on creditors—

See INSOLVENT ACT (11 & 12 Vict
c. 21) . . . I. L. R., 26 Bom., 171

—effect of non-service of—

See PUBLIC DEMANDS RECOVERY ACT
(BEN ACT VII OF 1880), ss. 8, 10, 12
[5 C. W. N., 86]

—in the alternative, sufficiency of—

See BENGAL TENANCY ACT, s 155
[I. L. R., 30 Calc., 1063]

—of acquisition of land—

See BOMBAY CITY IMPROVEMENT ACT.
[I. L. R., 27 Bom., 424]

—of annulment of incumbrances—

See SALE FOR ARREARS OF RENT—INCUM-
BRANCES . . . 5 C. W. N., 272

—of appeal—

See APPEAL—ACTS—COMPANIES ACT.
[I. L. R., 30 Calc., 758]

—of application—

See ACT—1863—XX, s 16
[I. L. R., 24 Mad., 685]

See COMPANIES ACT, s 160
[I. L. R., 25 Mad., 576]

• See REVISION—CRIMINAL CASES—MISCEL-
LANEOUS CASES

[I. L. R., 28 Mad., 41]

See SALE IN EXECUTION OF DECREE—
MORTGAGED PROPERTY

[I. L. R., 25 Mad., 506]

—of assignment—

See DEBTOR AND CREDITOR
[I. L. R., 26 Bom., 577]

See REGISTRATION ACT—

ss. 49 AND 60,

s 50,

s 50 AND s. 17.

—of charge—

See MORTGAGE—SALE OF MORTGAGED
PROPERTY—PURCHASERS.

See REGISTRATION
[I. L. R., 26 Bom., 538]

—of claim—

See RAILWAYS ACT (IX OF 1890), ss. 77
AND 140 . . . I. L. R., 26 Bom., 669

NOTICE—continued

—of deposit of mortgage-money—

See MORTGAGE—REDEMPTION—MISCEL-
LANEOUS CASES

[I. L. R., 27 Bom., 23]

—of deposit of rent in Court—

See BENGAL TENANCY ACT, SCH III, ART.
2 (a) . . . I. L. R., 29 Calc., 283

—of dishonour—

See HUNDI—NOTICE OF DISHONOUR
See NEGOTIABLE INSTRUMENTS ACT,
s. 95 . . . I. L. R., 26 Mad., 239

—of enhancement of rent—

See LAND-REVENUE.
[I. L. R., 26 Bom., 339]

—of execution of decree—

See LIMITATION ACT, 1877, SCH. II—
ART. 179—NOTICE OF EXECUTION;
ART. 160. I. L. R., 30 Calc., 979

—of foreclosure—

See MORTGAGE—FORECLOSURE—DEMAND
AND NOTICE OF FORECLOSURE.

—of inability to perform contract—

See CONTRACT—BREACH OF CONTRACT.
[I. L. R., 30 Calc., 477]

—of insolvency; effect of irregularity in posting—

See INSOLVENCY—INSOLVENT DEBTORS
UNDER CIVIL PROCEDURE CODE.
[5 C. W. N., 91]

—of prior incumbrance—

See REGISTRATION ACT, s 50
[I. L. R., 25 All., 868]

—of proceedings—

See POSSESSION, ORDER OF CRIMINAL
COURT AS TO—NOTICE TO PARTIES.

See SECURITY FOR GOOD BEHAVIOUR.
[I. L. R., 25 All., 375]

—of sale—

See APPELLATE COURT—OBJECTIONS
TAKEN FOR FIRST TIME ON APPEAL—
NOTICE OF SALE

See SALE FOR ARREARS OF RENT—
RIGHTS AND LIABILITIES OF PUR-
CHASERS; . . . 6 C. W. N., 877
[7 C. W. N., 386]

SETTING ASIDE SALE.

[I. L. R., 24 Mad., 307]

See SALE FOR ARREARS OF REVENUE—
SETTING ASIDE SALE—IRREGULARITY.
[I. L. R., 30 Calc., 1

NOTICE—continued.

—of suit—

- See BOMBAY CITY IMPROVEMENT ACT.
[I. L. R., 27 Bom., 424]
- See BOMBAY CITY MUNICIPAL ACT (BOM.
ACT III OF 1856), s. 527.
[I. L. R., 25 Bom., 387]
- See BOMBAY DISTRICT MUNICIPAL ACT
(BOM. ACT II OF 1834), s. 48.
[I. L. R., 25 Bom., 142]
- See CIVIL PROCEDURE CODE, s. 421.
- See PUBLIC OFFICER
[I. L. R., 26 Bom., 809]
- See SECRETARY OF STATE.
[I. L. R., 27 Bom., 189]

—of transfer—

- See LANDLORD AND TENANT—TRANSFER
BY LANDLORD . 7 C. W. N., 464
- See TRANSFER OF CRIMINAL CASE—GEN-
ERAL CASES . I. L. R., 24 Mad., 317

—pleadings not operating as—

- See RES JUDICATA—CAUSE OF ACTION
—CONTINUING GUARANTEE
[I. L. R., 27 Bom., 418]

—possession when equivalent to registra-
tion, for purposes of—

- See REGISTRATION ACT (III OF 1877), ss
49 AND 50 . I. L. R., 27 Bom., 408

—service of—

- See LAND ACQUISITION ACT (X OF 1870),
ss. 9, 16, 40 . I. L. R., 30 Calc., 576
- See PUBLIC DEMANDS RECOVERY ACT
(BEN. ACT I OF 1895)
[6 C. W. N., 830]

—sufficiency of—

- See COMMISSION—CIVIL CASES.
[6 C. W. N., 927]

—to accused—

- See COMPLAINT—DISMISSAL OF COM-
PLAINT—EFFECT OF DISMISSAL.
[I. L. R., 29 Calc., 457]
- See SANCTION FOR PROSECUTION—NO-
TICE OF SANCTION.

—to agent, binding principal—

- See DECLARATORY DECREE, SCIT FOR—
SCITS CONCERNING DOCUMENTS.
[I. L. R., 29 I. A., 203]

—to parties—

- See POSSESSION, ORDER OF CRIMINAL
COURT AS TO—NOTICE TO PARTIES.

NOTICE—concluded.

—to quit—

- See LANDLORD AND TENANT—
TRANSFER BY TENANT;
[6 C. W. N., 916, 919]
- See EJECTMENT—NOTICE TO QUIT.
- See RULES MADE UNDER ACTS—BENGAL
TENANCY ACT. I. L. R., 28 Calc., 590
- to Revenue authorities, of alleged trans-
fer; effect of—
See TRANSFER OF PROPERTY.
[I. L. R., 28 I. A., 46]

NOTIFICATION.

—issue of, before commencement of Act—

- See BENGAL IRRIGATION ACT, ss. 1, 6.
[I. L. R., 29 Calc., 487]

—issued under repealed Act, continuance
of—

- See PETROLEUM ACT (VIII OF 1893), ss.
1 (3), 11 AND 15 . 7 C. W. N., 658

NUISANCE.

- See GAMBLING . 7 C. W. N., 710
- See MADRAS CITY MUNICIPAL ACT, 1884,
ss. 332, 433 AND 453.
[I. L. R., 25 Mad., 118]

—under Criminal Procedure Code—

- See SECURITY FOR GOOD BEHAVIOUR.
[I. L. R., 28 Mad., 471]
- See VERDICT OF JURY . 11 C. W. N., 886

UNDER CRIMINAL PROCEDURE CODE.

2.—Dispute as to land—Decree of Civil
Court, existing—Criminal Procedure Code (Act
V of 1898), s. 144, order under, effect of—Land-
lord and tenant—Jurisdiction.—An order under
a 144, Criminal Procedure Code, made or affirmed con-
trary to an existing decree of the Civil Court, in re-
spect of the same lands, is illegal. Where the dispute

NUISANCE—continued.**UNDER CRIMINAL PROCEDURE CODE—
continued.**

was between a landlord and a tenant, and the landlord obtained a decree for *lras* possession in respect of such lands as had been leased to the tenant, the fact that the landlord was unable to point out the particular lands of which he had obtained possession.

the landlord. **GORIND SAHAI v. SING AND CARRUTHERS (1902)** 6 C. W. N., 488

3.—Encroachment on road—*Criminal Procedure Code, s. 133*—Encroachment upon unmetalled portion of a Government road.—Held that any obstruction upon a public road is a nuisance, within the meaning of s. 133 of the Code of Criminal Procedure, whether in point of fact it causes practical inconvenience or not. **QUEEN-EMPERESS v. KEDAR NATH (1901)** I. L. R., 23 All., 159

4.—Jurisdiction of Magistrate—*Penal Code (Act XLV of 1860), s. 188*—Disobedience of an order of a public servant, lawfully promulgated—Order under s. 144, *Criminal Procedure Code*, *intentionally with the average of private parties of*

5.—*Criminal Procedure Code (Act V of 1898), ss. 144, 487*—Order to "abstain from a certain act"—Trial by Magistrate.

from the simultaneous use of a certain mosque by members of the *Hanafi* and *Shafi* sects, the Magistrate passed an order, addressed to ten members, who were named, and several others of the *Hanafi* sect, and to three members, who were named, and several others of the *Shafi* sect. The order concluded as follows:—"I do order hereby that the following order should be observed in regard to the entry of the said mosque by any of you or any other Muslims of the *Hanafi* and *Shafi* sects for a period of two months from this date, unless in the meanwhile you establish your right in a Court of competent civil jurisdiction." It set out five periods of half an hour each during which each sect, respectively, might enter the mosque on ordinary days, and two periods of one hour each in which each sect might enter the mosque on other days. Held that the order was within the powers conferred by s. 144 of the Criminal Procedure Code. Certain members of the *Hanafi* sect having entered the mosque in

NUISANCE—continued.**UNDER CRIMINAL PROCEDURE CODE—
continued.**

disobedience to the order heretofore referred to, they were charged with an offence under s. 144 of the Code, with intent to obstruct the public. The Magistrate had passed an order under s. 144, *Queen-Emperess v. Abdulla Sahib (1900)* [I. L. R., 24 Mad., 282]

6.—Management of temple—*Criminal Procedure Code (Act V of 1898), s. 144*—Order to abstain from interfering with the management of a temple until the erection of another person—*Legality of order*—An order passed under s. 144 of the Code of Criminal Procedure directed a person (1) not to interfere with the management of a certain temple, (2) until another person should be duly evicted from the management by due course of law. Held that the first portion of the order was a direction to "abstain from a certain act" within the meaning of those words as used in s. 144 of the Code of Criminal Procedure; but that the latter portion contravened the provisions of sub-s. (5) of that section, and that to that extent the order was made without jurisdiction. **RAMANADHAN CHETTI v. MURUGAPPA CHETTI (1900)** [I. L. R., 24 Mad., 45]

7.—Obstruction of pathway—*Criminal Procedure Code (Act V of 1898), s. 183*—Public

8.—Possession—*Criminal Procedure Code (Act V of 1898), ss. 107, 144, 145*—Possession, disputes relating to—Finding arrived at without instituting proceeding under s. 145, *Criminal Procedure Code*, if proper—*Chaudidari Act (Ben. Act VI of 1870), s. 51*, order under, effect of—Security to keep the peace, order of proper—Where, in a case of dispute relating to possession of

Code, restraining them in the exercise of certain rights claimed by them as in possession of the lands in dispute, and also proceeded to bind the petitioners over to keep the peace under s. 107, Criminal

NUISANCE—continued.**UNDER CRIMINAL PROCEDURE CODE—continued.**

Procedure Code: *Held* that the Magistrate was not competent to arrive at a finding as to possession, except in a judicial inquiry held under s. 145, Criminal Procedure Code; nor could he rely on a previous order passed under s. 51 of the Bengal Chauthdari Act, as such order only transferred the right to the lands in question, and did not give possession to anybody. *Also* that proceedings under s. 107, Criminal Procedure Code, could not properly be instituted in such a case. *Also* that the Magistrate's order under s. 144, Criminal Procedure Code, having ceased to operate by lapse of time, no order would be passed in respect of it. *SARODA PRASAD SINGH v. EMPEROR* (1902) . 7 C. W. N., 142

9.—Removal of prostitutes—*Criminal Procedure Code (Act V of 1893), ss 133, 139—Public nuisance—Prostitutes, trade and occupation of—Removal of house from roadside, order for—“Physical comfort” of the public—Jury, opinion of.*—The mere existence of houses of prostitutes by the roadside, and the fact that they ply their trade in those houses, cannot affect the “physical comfort” of the passers-by. In a proceeding under s. 133, Criminal Procedure Code, certain prostitutes were called upon to remove their trade and occupation from the slopes and neighbourhood of a road; they appeared, and, in showing cause, claimed a jury, which was appointed; the jury were of divided opinion, and the majority suggested that they should be directed to mend their habits, but did not recom-

10.—Revival of proceedings—*Code of Criminal Procedure (Act V of 1893), s. 133—Nuisance, removal of—Effect of dropping of previous proceeding—Magistrate, jurisdiction of, to take fresh proceedings regarding the same matter.*—There is no bar in law to the revival of a proceeding under s. 133, Criminal Procedure Code, with regard to the same matter which had been previously dropped, provided there are materials before the Magistrate upon which *prima facie* he could act. The question whether the matter with regard to which a proceeding has been instituted does

11.—Time limit—*Criminal Procedure Code (Act V of 1893), s. 141—Urgent cases of apprehended danger, order made upon—Limit as to time—Lapse—Renewal—Magistrate's jurisdiction.*—A Magistrate is not competent to make an order under s. 144, Code of Criminal Procedure, which, not being limited in time, purports on the face of it to be the nature of a perpetual injunction. Where an order under s. 144, Code of Criminal Procedure, has lapsed on the expiry of two months under sub-s. (5)

NUISANCE—concluded.**UNDER CRIMINAL PROCEDURE CODE—concluded.**

of that section, the Magistrate has no jurisdiction to make an order for its renewal. *REMIJ SINGH v. LUCHMAN PRASAD* (1902) . 7 C. W. N., 140

NUNCUPATIVE WILL.

See PROBATE—OF WHAT DOCUMENTS GRANTED . I L R., 25 All., 313

0

OATHS ACT (X OF 1873).

—Decree upheld in appeal on strength of oath—*Final adjudication.*—A suit of 1898 had been affirmed on appeal on the strength of an oath taken under the Oaths Act. *Held* that it was a confirmation of the original decree. As between the parties, a decree arrived at after the taking of an oath on a question of fact in the case is none the less a final adjudication. *AMRUT C. MOHIN* (1901)

[I L R., 24 Mad., 444

—s. 13—

See COMMISSION—CIVIL CASES.
[7 C. W. N., 806

OBJECTION.

See APPEAL—OBJECTIONS BY RESPONDENT.

See APPELLATE COURT—OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

OBSTRUCTION.

See RESISTANCE OR OBSTRUCTION TO ARREST.

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

—of public servant—

See PENAL CODE, s. 186. 6 C. W. N., 120

—removal of—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

—to flow of water—

See RIGHT TO USE OF WATER.

—to public way—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE . 8 C. W. N., 890

[I L R., 23 All., 159
7 C. W. N., 117.

OBSTRUCTION—concluded.**—to public way—concluded.**

See **RIGHT OF SUIT—OBSTRUCTION OF PUBLIC HIGHWAY**

See **WRONGFUL RESTRAINT**

[5 C. W. N., 215]

—to right of way—

See **POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, ETC.** 5 C. W. N., 335

—to rights of property—

See **INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY**

See **RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.**

OCCUPANCY.

See **PUNJAB LAWS ACT**

[I. L. R., 30 Calc., 635]

See **RIGHT OF OCCUPANCY.**

OFFENCE ON THE HIGH SEAS.

See **JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION—OFFENCE COMMITTED ON THE HIGH SEAS**

OFFERINGS.

See **ATTACHMENT—SUBJECTS OF ATTACHMENT—OFFERINGS TO HINDU DEITY.**

OFFICER.**—liability of—**

See **COMPANY—WINDING UP—LIABILITY OF DIRECTORS AND OFFICERS.**

—of Government—

See **GOVERNMENT OFFICERS, ACTS OF.**

See **PUBLIC OFFICER.**

See **PUBLIC SERVANT.**

OFFICIAL ASSIGNEE.

See **APPEAL—ORDERS.**

[I. L. R., 25 Mad., 408]

See **INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.**

See **INSOLVENT ACT** (11 & 12 VICT., 21).

See **PUBLIC OFFICER**

[I. L. R., 28 Bom., 609]

OMISSION TO APPEAL.

See **APPEAL—OMISSION TO APPEAL IN TIME AGAINST PRELIMINARY ORDER OR DECREE.**

OMISSION TO SUE FOR PORTION OF CLAIM.

See **RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM**

ONUS OF PROOF.

| | Col. |
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| 1. LANDLORD AND TENANT . . . | 776 |
| 2. LEGITIMACY | " |
| 3. LIMITATION AND ADVERSE POSSESSION | " |
| 4. MESNE PROFITS | 778 |
| 5. MORTGAGE | " |
| 6. POSSESSION, AND PROOF OF TITLE | " |
| 7. PRINCIPAL AND AGENT | 779 |
| 8. WILL | " |

See **CONTRACT—WAGERING CONTRACTS.**

[I. L. R., 25 All., 38]

See **DECLARATORY DECREE, SUIT FOR—MISCELLANEOUS SUITS**

[I. L. R., 24 All., 170]

See **EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—CRIMINAL COURT, PROCEEDINGS IN.**

[I. L. R., 29 Calc., 187]

See **FALSE CHARGE.** 5 C. W. N., 106

See **HINDU LAW—**

ADOPTION—EVIDENCE OF ADOPTION; I. L. R., 30 Calc., 999

ALIMENTATION—ALIMENTATION BY FATHER; I. L. R., 26 Bom., 328

CUSTOM—IMPARTIBILITY;

[I. L. R., 29 Calc., 828]

JOINT FAMILY—PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY.

See **INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.**

[5 C. W. N., 91]

See **LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY PAYMENT OF RENT . . .** I. L. R., 28 Bom., 410

See **MALICIOUS PROSECUTION.**

See **MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.** I. L. R., 27 Bom., 271

See **NEGOTIABLE INSTRUMENTS ACT, s. 93.** [I. L. R., 26 Mad., 239]

ONUS OF PROOF—continued.

See **PARDANASHIN WOMEN**,

See **SALE FOR ARREARS OF REVENUE—SET-
TING ASIDE SALE—IRREGULARITY.**

[I. L. R., 30 Calc., 1

See **SPECIFIC RELIEF ACT, s. 9.**

[I. L. R., 24 All., 501

See **SUMMONS, SERVICE OF.**

[I. L. R., 23 All., 99

See **VARIANCE BETWEEN PLEADING AND
PROOF**

See **WILL—VALIDITY OF WILL**

[I. L. R., 23 All., 472

—age—

See **EVIDENCE ACT, s. 32, CL. (5)**

[I. L. R., 25 Mad., 184

—ejectment—

See **LANDLORD AND TENANT—EJECT-
MENT** . . . 6 C. W. N., 105

See **SERVICE TENURE.**

[I. L. R., 26 Mad., 403

—enhancement of rent—

See **EVIDENCE—CIVIL CASES—MISCELLA-
NEOUS DOCUMENTS—ROAD-CLASS PAPERS.**

[I. L. R., 30 Calc., 1033

See **RENT, SUIT FOR** . 5 C. W. N., 880

—legitimacy—

See **EVIDENCE ACT, s. 112.**

[I. L. R., 29 Calc., 111

—minority—

See **COMPROMISE—COMPROMISE OF SUITS
UNDER CIVIL PROCEDURE CODE.**

[I. L. R., 26 Bom., 109

—negligence—

See **RAILWAY COMPANY—LIABILITY OF
COMPANY** . I. L. R., 28 Calc., 401

—partibility of estate—

See **HINDU LAW—IMPARTIBLE PROPERTY.**

[I. L. R., 24 Mad., 582

—possession, and proof of title—

See **UNLAWFUL ASSEMBLY.**

[5 C. W. N., 388

—that accused is the person against
whom warrant issued—

See **WARRANT OF ARREST—CRIMINAL
CASES** . . I. L. R., 28 Calc., 389

—that lands are mal—

See **EVIDENCE—CIVIL CASES—MAPS.**

[7 C. W. N., 612

—that Nepal is in India—

See **NEPAL** . . . 7 C. W. N., 635

ONUS OF PROOF—continued.

—that Permanent Settlement of 1783
applies to particular land—

See **EVIDENCE—CIVIL CASES—MAPS.**

[I. L. R., 30 Calc., 291

1. LANDLORD AND TENANT.

1.—**Penal Code (Act XLV of 1860), s. 424—
Dishonest removal of property to avoid distraint—
Distraint for arrears of rent under the Rent
Recovery Act—Absence of presumption in favour
of its legality—Onus of proof on prosecution to
prove legality—Conviction in absence of such**

offence, inasmuch as they had a right of private
defence of their property unless the distraint was
legal. **KING-EMPEROR v. GOPALASAMY (1932)**

[I. L. R., 25 Mad., 729

2.—**Permanency of tenancy.**—In a suit for eject-
ment, where the defendant sets up a permanent
tenancy, the onus is upon the defendant to show
this. **ISMAIL KHAN MAHOMED v. AGHORE NATH
MUKERJEE (1903).** . . . 7 C. W. N., 734

2. LEGITIMACY.**3. LIMITATION AND ADVERSE POSSESSION.**

4.—**Limitation—Act XV of 1877, Sch. II,
Art. 137—Proof of exclusion from joint family
property—Mere non-participation in or refusal
to live on joint property, insufficient—Hindu law
—Suit by one of three widows against her two
co-widows, for partition of widow's estate in their
late husband's property—Proof of exclusivity on
part of plaintiff during widowhood, no ground for
refusal—Tenant-in-common—Partition a matter**

ONUS OF PROOF—continued.**3. LIMITATION AND ADVERSE POSSESSION—concluded.**

of right.—One Pangani died in or about the year 1800, leaving three sons, the eldest of whom was the plaintiff.

She claimed to have participated in the profits of the family property until 1890, but the defendants contended that she had ceased to participate therein for many years before the institution of the suit.

The plaintiff had been living with her paramour subsequent to her husband's decease, and had supported herself without recourse to the family property, and had refused to live with defendants. *Held* that the burden lay on the defendants of proving that plaintiff, who was admittedly a tenant-in-common with them till 1882, was excluded from enjoyment of the property. Mere proof of refusal on the part of the plaintiff to live with her co-widows, or of non-participation by her in the family property, did not establish ouster or exclusion by defendants, and there was no other evidence to show that she had abandoned her interest to their knowledge. *Held also* that proof of plaintiff's unchastity after her husband's death did not constitute a bar to her claim.

5. Joint family—Adverse possession of a co-sharer as against another co-sharer—Burden of proof.—The land in question in the suit had

Possession, to be adverse, must be shown to be continuous, public, and adequate to the circumstances of the case. As between brothers, especially when no partition is proved, the adverse possession of one should be proved by more satisfactory evidence than was given in this case. **JAGJIVANDAS v. HAJ AMBA** (1900) I. L. R., 25 Bom., 382

ONUS OF PROOF—continued.**4. MESNE PROFITS.**

6.—Mesne profits, suit for—Onus—Notice of vacating possession.—In a suit for mesne profits, as in other cases, it is incumbent on the plaintiff to show that the defendant was in possession of the property during the period for which the profits are claimed.

5. MORTGAGE.

7.—Mortgage suit—Fraud—Collusion.—In a suit on a mortgage, where collusion and fraud are pleaded by a subsequent auction-purchaser of the mortgaged property, the plaintiff must prove the fraud and collusion.

6 POSSESSION, AND PROOF OF TITLE.

8.—Possession—Declaration of title—Suit by person in possession for declaration of title—Burden of proof—Evidence—Effect of plaintiff's possession—Presumption of title—Evidence Act (1 of 1872), s. 110.—The plaintiffs brought this suit in 1898 for a declaration that certain land in the

ONUS OF PROOF—continued.**6. POSSESSION, AND PROOF OF TITLE—concluded.**

act; that the plaintiffs were therefore not relieved from the burden of proving their title; and that they had not proved it. *Per* RANADE, J.—When a person in possession of land has been dispossessed, and sues to recover it, the fact of his previous possession will not entitle him to a decree unless he sues under s. 9 of the Specific Relief Act (I of 1877) within six months of the date of dispossession. If he sues after the six months have expired, he must prove a *prima facie* title. In such a case he is entitled to a decree unless a person sues to remove the other from the land, in which case the burden of proof on the defendant when the *prima facie* title is made out. When no such *prima facie* title is made out by the plaintiff, who asks for a declaratory decree, he cannot obtain that decree on the mere ground that he was in possession and that the defendant had no title. Mere wrongful possession is insufficient to shift the burden of proof. *HANMANTRAY v SECRETARY OF STATE FOR INDIA* (1900). I. L. R., 25 Bom., 287

7. PRINCIPAL AND AGENT

9.—Act I of 1872 (Indian Evidence Act), s. 111—Gift to an agent—Undue influence—Mental capacity of donor—Held that there is nothing to prevent an agent from being the object of the bounty of his principal. If an agent can clearly

8. WILL

10.—Evidence and proof of will—Suit for declaration that will is not genuine—Omission by party impeaching will, to give evidence or cross-examine witnesses.—The defendants (widow and sister-in-law of a deceased talukdar) set up a will under which they alleged they took all the property of the testator absolutely, whereupon the plaintiffs,

gave evidence that the will was forged, though they asserted that "they would prove it to be spurious if necessary," raised no presumption of the genuineness of the will. Nor did the omission of the plaintiffs to cross-examine some witnesses called by the Court previously to hearing to explain the alleged loss and consequent non-production of the will give rise to any presumption in favour of its validity. They were not bound to cross-examine the witnesses,

ONUS OF PROOF—concluded.**8. WILL—concluded.**

which they could not have done without permission of the Court, but were perfectly justified in waiting

OPIUM.

—illicit, possession of—

See OPIUM ACT (I OF 1878), s. 9.

[I. L. R., 25 All., 202]

OPIUM ACT (I OF 1878).

—s. 9.—*Possession of illicit opium—Custody of a locked box, containing opium lawfully belonging to the owner of the box.—A locked box, containing the stock of opium and books of a licensed vendor of opium, the key of which was kept by the owner, was found in the house of a person who lived next door to the shop of the opium vendor; and it appeared that the opium vendor, instead of taking his box home with him at night, had left it in the shop.*

ORAL EVIDENCE.

See EVIDENCE—PAROL EVIDENCE.

See WITNESS—

CIVIL CASES;

CRIMINAL CASES.

ORDER.

See APPEAL—

DECREES;

[I. L. R., 28 Cal., 81]

ORDERS.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS.

See INTERLOCUTORY ORDER.

See LETTERS PATENT, HIGH COURTS, 1865, CL 15

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

—framed in alternative—

See SANCTION FOR PROSECUTION—NATURE, FORM AND SUFFICIENCY OF SANCTION [I. L. R., 25 All., 234]

ORDER—concluded.

—In execution of decree—

See **APPEAL—EXECUTION OF DECREE.**See **RES JUDICATA—ORDERS IN EXECUTION OF DECREE**

—issue of, before commencement of Act—

See **BENGAL IRRIGATION ACT, ss. 1, 6**

[I. L. R., 28 Cal., 487]

—of Magistrate, in respect of nuisance—

See **NUISANCE**

—of Magistrate, in respect of possession—

See **POSSESSION, ORDER OF CRIMINAL COURTS AS TO**

—When a “decree”—

See **CIVIL PROCEDURE CODE, s. 2—**
“DECREE,” DEFINITION OF**DIGAMBAR DAS (1902)** . . . 6 C. W. N., 548**ORIGINAL SIDE OF HIGH COURT.**

—civil—

See **RIGHT OF SUIT—FRAUD**

[7 C. W. N., 353]

—right to plead in—

See **PRACTICE—CIVIL CASES—VAKIL AND COUNSEL** I. L. R., 30 Cal., 988See **SUPERINTENDENCE OF HIGH COURT—**
CIVIL PROCEDURE CODE, s. 622.

[7 C. W. N., 843]

ORISSA.See **TRIBUTARY MANALS OF ORISSA****ODDH COURTS ACT (XIV OF 1891).**

—s. 8—Jurisdiction—Appeal—Additional Judge

ODDH ESTATES ACT II OF 1869)—concluded.

cl. (11)—Nature of estate—Conflict between ambiguous and unambiguous texts of Hindu law—Interpretation, rule of—Communis error facit jus—Oudd Estates Act (I of 1869), list 2, ss. 8 and 22, Manu, Ch. XI, verses 122 to 125—An estate taken under cl. (11) of s. 22 of Act I of 1869 descends as an impartible estate under the provisions of Act I of 1869, list 2, ss. 8 and 22. *Dewan v. . . .*

sons of other wives *Ramalakshmi Ammal v. Sivanantha Perumal Sithurayar* (1872), 14 Moo. J. A., 670, and *Pedda Ramappa Nayanaiparu v. Bangari Seshamma Nayanaiparu* (1880), L. R., 8 I A., 1, referred to and followed. In construing texts of Hindu law, where certain verses are inconsistent, and one is reasonably free from

communis error facit jus is a sound maxim. *Manu*, Ch. IX, verses 122 to 125, discussed *JAGDISH BAHADUR v. SHEO PERTAB SINGH* (1901)

[5 C. W. N., 602; a.c., I. L. R., 23 All., 389; I. R., 28 L. A., 100]

—ss. 2, 11—

See **HINDU LAW—STRIDHAN—DESCRIPTION AND DEVOLUTION OF STRIDHAN.**

[I. L. R., 25 All., 478]

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See **WILL—VALIDITY OF WILL.**

[I. L. R., 35 All., 121]

ODDH LAND-REVENUE ACT (XVII OF 1876)

—Ch. VIII (ss. 161 to 177A)—

See **COURT OF WARDS**

[I. L. R., 25 All., 195]

—ss. 161, 166, 172—

—Court of Wards, power of, to alienate wards' property—Award beyond the terms of reference—*Ultra vires* award.—The powers of a Court of Wards are those of a guardian, supplemented by

ODDH ESTATES ACT (I OF 1869).

—Oudd talukdars' estate—Succession—Elder son born of younger wife—Younger son born of first wife—Oudd Estates Act (I of 1869), s. 22,

ODUH LAND-REVENUE ACT (XVII OF 1876)—concluded.

—ss. 161, 166, 172—concluded.

where it is not for the benefit of the ward's property or to his advantage. An award that goes beyond the terms of reference to the arbitrators is to that extent *ultra vires*. **MOHAMMED MUNTAS ALI KHAN v. SAKHAWAT ALI KHAN** (1901)

[5 C. W. N., 881: s.c., I. L. R., 28 All., 394;
I. R., 28 I. A., 169]

ODUH, LAW OF.

See EJECTMENT, SUIT FOR.

[I. R., 28 I. A., 169]

ODUH LAWS ACT (XVIII OF 1876).

See PRE-EMPTION—RIGHT OF PRE-EMPTION . . . I. L. R., 24 All., 420

ODUH RENT ACT (XXII OF 1886).

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.

[I. R., 29 I. A., 203]

OWNER OR OCCUPIER OF LAND.

—responsibility of—

See RIXING . I. L. R., 28 Calc., 504

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See PRIVY COUNCIL, PRACTICE OF—COSTS.
[I. R., 29 I. A., 156]

PARDANASHIN WOMEN.

See COMMISSION—CIVIL CASES.

[8 C. W. N., 927]

See LIMITATION—QUESTION OF LIMITATION . . . I. L. R., 29 Calc., 684

See PAUPER SUIT—APPEALS.

[I. L. R., 24 All., 172]

1.—Execution of deed by—Execution of mortgage deed—Separate explanation necessary where executants are in separate interest. —Among the executants of a deed of mortgage of a testator's estate to secure debts for which it was

PARDANASHIN WOMEN—concluded.

liable were two pardanashin ladies, one an executrix of the will, the other a donee of villages from the testator in his lifetime which in her hands were not liable to the testator's debts. *Held* that, to raise one issue as to the due execution of the deed as affecting both ladies, was an error in procedure. Even if the executrix was rightly held liable, there must nevertheless be clear evidence of a separate explanation of the deed to the donee of the villages, and a clear understanding by her that she was assuming liability for debts not her own, and was charging her villages therewith. **ANNODA MOHUN ROY CHOWDHURI v. BHUBAN MOHINI DEBI** (1901)

[I. L. R., 28 Calc., 546: s.c., 5 C. W. N., 489;
I. R., 28 I. A., 71]

2.—Non-production of mukhtarnama—Evidence—Insufficiency of evidence that deed was explained to her and that she understood it.—In a suit brought against a pardanashin lady on a mortgage bond which purported to be signed in her name "by the pen of Soonder Lal, son-in-law and am-mukhtar," under a mukhtarnama, which was not produced: *Held* that secondary evidence of the mukhtarnama was, on the facts put forward to account for its non-production, inadmissible, but, even if admissible, it was not sufficient to

[I. L. R., 29 Calc., 749: s.c., 11 C. W. N., 682;
I. R., 29 I. A., 127]

3.—Will of—Will of a Mahomedan—Rules applicable to the execution thereof—Undue influence—Indian Succession Act (X of 1855), s. 49

that that section does not apply to the wills of Mahomedans, but for all that it is a useful guide as to what does or does not constitute undue influence. **KHAS MEHAL v. ADMINISTRATOR GENERAL OF BENGAL** (1901) . . . 5 C. W. N., 505

PARDON.

See APPROVER.

PARDON—continued.

1.—**Withdrawal of—Criminal Procedure Code (Act V of 1898), ss. 337, 339—Withdrawal of pardon and commitment for trial—Procedure.**—*R* was charged with having committed the offence of dacoity, with others. In consequence of a confessional statement made by *R*, pardon was tendered to him by the stationary Sub-Magistrate, under the District Magistrate's order. *R* was subsequently examined as a witness for the prosecution at a preliminary inquiry into the dacoity held by the Magistrate under Ch. XVIII of the Code of Criminal Procedure, but he retracted his former statement (which, he said, was a police torture). *R* was then examined as a witness, and, in the end, the persons charged were acquitted. Upon the subsequent application of the police, the District Magistrate withdrew the pardon which had been tendered to *R*, on the ground that the latter had withdrawn and contradicted his first statement. *R* was in due course charged before the same Sub-Magistrate with having been one of the dacoits, and was committed for trial. Held that the commitment was legal. The words "in the case," which occur in s. 337 (2) of the Code of Criminal Procedure, include a preliminary inquiry, and do not refer to the trial alone. If there is reason to believe that a person to whom pardon has been tendered is a dacoit, there is no bar to his being examined as a witness.

when pardon is revoked, no steps should be taken against the person who forfeits it until after the trial of the other accused is over; and that his trial should then

Brij Narain
Queen-Empress
considered.

2.—**Criminal Procedure Code (Act V of 1898), ss. 337 and 339—Criminal procedure—Pardon, tendered and accepted—**

PARDON—concluded.

the close of the trial, and should be made by the Court of Session, and (2) because the fact, the alleged concealment of which was the ground of the withdrawal, had not been proved. The accused, however, was found guilty and sentenced. On

still in force, and the accused should be discharged. As the law stands, the question in such cases is whether the accused has forfeited his pardon by some act of his own. The question is one of fact, in

such person shall be examined as a witness "in the case," or whether such person must be examined as a witness at the "trial." *Queen-Empress v. Bhau* (1898), *I. L. R.*, 23 Bom., 494, doubted. *KING-EMPEROR v. BALA* (1901). *I. L. R.*, 25 Bom., 676

PARENTAGE, PROOF OF.

See LEGITIMACY.

PAROL EVIDENCE.

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PARTI MARIAGE AND DIVORCE ACT (XV of 1865).

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—same party cannot be plaintiff and
 defendant in one suit—

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—suits by some of a class as representatives of class—

See **RIGHER TO USE OF WATER.**

[I. L. R., 29 Calc., 100]

1 PARTIES TO SUITS.

1.—**Heirs.**—The practice hitherto prevailing in the refusal of making a dead man "by his heir" a party to a suit is erroneous, and should be discontinued. **GOVIND ABAJI JAKHADI & MOHONIBAI VINAYAK JAKHADI** (1901). I. L. R., 25 Bom., 494

2.—**Idol—Shedat**—It is a settled rule of Hindu law that an idol is a juridical person who can take

3.—**Joint family—Letters Patent—Transfer of Property Act (IV of 1932), s 85**—Hindu law—**Mitakshara—Mortgage—Karta—Decree—Statutes, interpretation of—Notice—Civil Procedure Code (Act XIV of 1894), ss 437, 575—Joinder of parties—Redemption**—In a joint **Mitakshara** family, consisting of a father and minor son, the father, as **karta** of the family, by a mortgage bond hypothecated the joint property.

the minor plaintiff, it must now be taken as between him (the plaintiff) and the mortgagee to have been

PARTIES—continued.**1. PARTIES TO SUITS—continued.**

of the same. **Bank of England v.agliano** (1891), A. C., 107, 144; **Narendra Nath Sircar v. Kamalbasini Dasi** (1896), I. L. R., 23 Calc., 563; **Rajnarain Bhaduri v. Katayani Dabee** (1900), I. L. R., 27 Calc., 649, referred to. **LALA SUBAT PRASAD v. GOLAB CHAND** (1901)

[I. L. R., 28 Calc., 517; s.c., 11 C. W. N., 640]

4.—**Hindu law—Joint Hindu family—Mortgage—Liability of non-executant members on a mortgage executed by some only of the members of a joint Hindu family—Burden of proof.**—In a suit for sale on a mortgage of the joint family property executed by the father and three of his sons, the plaintiff made defendants, besides the executants, the fourth son, who was a minor, and four grandsons, also minors. **Held** that the non-executant members of the family were properly arrayed as defendants to

Modhuk Mohun (1935), I. L. R., 18 Calc., 21, referred to. **DESI DAT v. JADU BAI** (1902)

[I. L. R., 24 All., 459]

5.—**Mortgage—Joint Hindu family—Liability of other members of the family under a mortgage executed by the manager.**—Where a mortgage of joint family property has been executed by the managing members of a joint Hindu family, the remaining members of the family are proper parties to a suit for sale based on such mortgage

6.—**Act IX of 1872 (Indian Contract Act), s 239—Partnership—Joint Hindu family—Rights and liabilities of a partnership**

are not shown to have been admitted into the trading firm, or to have taken part in its business, need not be made parties as plaintiffs to a suit to recover moneys due to the family trading firm. **Kalidas**

PARTIES—continued.

1. PARTIES TO SUITS—continued.

Keraldas v. Nathu Bhagwan (1883), *I. L. R.*, 7 Bom., 217; *Imam-ud-din v. Liladar* (1892), *I. L. R.*, 19 Cal., 402.

ANANT RAM C. CHANNU LAL (1903)

(*I. L. R.*, 25 All., 378)

7.—Legacy, suit for—Executor—Legacy—Suit

executor for breach of trust—Trust Act (II of 1882), s. 23—A legatee is entitled to sue an executor for a legacy bequeathed to him by a Hindu testator in the *mojussil*. In case such a suit is brought by one legatee, the executor may apply, for his own protection, that other legatees shall be made parties, so that if any rateable abatement is requisite the extent of such abatement may be ascertained in a manner binding on all parties interested. But any such application must be made at the earliest possible opportunity, having regard to the provisions of

completely to adjudicate upon and settle all the

FURSHOTTAK DEYJISRET THAKAR C. KALA GOVINDJI THAKAR (1901) *I. L. R.*, 26 Bom., 301

8.—Mortgages, suits concerning—Trans-

purchased a portion of the mortgaged property with the consent of the mortgagee, are not necessary parties in a suit by the mortgagee for contribution or apportionment of the mortgage debt. A suit by the mortgagee, framed improperly for a declaration of the rights of the purchasers of portion of the mortgaged property of redemption to the properties purchased by them, who were not made parties in the mortgage suit, and for declaration of the mortgagee's absolute right over those properties on the failure of such purchasers to redeem, and for *khas* possession, will not lie. The only relief to which the mortgagee in such a case is entitled is a

PARTIES—continued.

1. PARTIES TO SUITS—continued.

decree for apportionment of the mortgage debt on the property purchased by the purchasers, account being taken of the property of other parties of the portion by the mortgagee. *CHAND* 423

9. — Civil Procedure Code (*Act XIV of 1882*), s. 437—*Parties—Mortgage—Decree for foreclosure—Decree against executor—Application for redemption by beneficiary*.—Where a decree for foreclosure was obtained against *S*, who was the executor of his father's estate, and subsequently *A*, a brother of *S*, and *M*, a purchaser of some of the mortgaged properties from *A*, made an application to be made parties and to redeem: *Held* that they were not entitled to be made parties. *MOHANAND CHATTERJEE C. AKHOY KUMAR BHABH* (1901) *C. W. N.*, 488

10. — Transfer of Property Act (*IV of 1882*), s. 85—*Appeal—Parties—Practice*.—A *jemi*, having sued the *kanomdar* and his sub-tenants, obtained a decree for redemption and possession on certain terms. The sub-tenants, objecting to

set aside, as no reasonable excuse was forthcoming for the omission to make him a party. *Ramunni Panikar v. Sankara Panikar* (1899), *I. L. R.*, 25 Mad., 571a, and *Vedapuratti v. Govinda Menon* (1892), *I. L. R.*, 25 Mad., 571n, followed. *VEDAPURATTI C. AVARA* (1901)

(*I. L. R.*, 25 Mad., 588)

11. — Transfer of Property Act, s. 85—*Confirmation of possession, suit for, by prior mortgagee—Redemption—Estate mortgage, right of, after sale by prior mortgagee—Parties*.—A decree obtained by a prior mortgagee, who had no knowledge of puisne mortgages, is not bad under s. 85 of the Transfer of Property Act because the latter were not made parties. Where a prior mortgagee, who had purchased the mortgaged property in execution of such a decree, brought a suit for confirmation of possession against the puisne mortgagees, who also had previously purchased that property in execution of their mortgage decrees: *Held* that the plaintiff ought to succeed against the puisne mortgagees, but subject to their right to redeem the prior mortgage. *Gopes Bundhoo Shantra v. Kalsapudo Banerjee* (1873), 23 *W. R.*, 335, distinguished. A purchaser under a prior mortgage may always shield his possession and protect his interest by setting up such prior mortgage, and it is not proper to allow him to be dispossessed simply on the ground that a third party has the right to redeem. *BENWANT JHA C. RAMJEE THAKUR* (1902) *C. W. N.*, 11

12. — Transfer of Property Act (*IV of 1882*), s. 83—*Non-joinder—Apportionment*

PARTIES—continued.

1. PARTIES TO SUITS—concluded.

of mortgage debt—Purchaser of mortgaged property—Release—When a purchaser from the mort-

and the other mortgaged property. In such a case the mortgage should be treated as split up into two **HARI KISSEN BHAGAT v. VELLIAT HOSSAIN (1903)** [I. L. R., 30 Cal., 755; s.c., 7 C. W. N., 723]

13.—Receiver—Practice—Application for leave to sue a Receiver—The Receiver is not a necessary party to a suit for possession of immovable property **SUTTIA SUTTIA GHOSAL v. GOLAP MONT DEBI (1897)** . . . 5 C. W. N., 27

14.—Rent, suits for, add intervenors in such suits—Appeal—Defect of parties—Death of one of plaintiffs—respondents—Effect of not bringing in the heirs of the deceased on the record—Suit for arrears of rent by several plaintiffs—Joint-

appeal could not proceed, and must fail by reason of defect of parties. **BEJOY GOPAL BOSE v. UMESH CHANDRA BOSE (1901)** . . . 6 C. W. N., 196

15.—Act XII of 1881 (N. W. P. Rent Act), s. 148—Landholder and tenant—Suit for rent—Plea of payment to third person—Suit by such third person for declaration of title and for possession—Limitation—Held that the proviso to s. 148 of the North-Western Provinces Rent Act, 1881, refers only to a suit to recover the rent in respect of which the suit mentioned in the first paragraph of the section has been brought, which rent has actually been paid to a third person. The proviso was not intended to abridge the period

2. SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.

16.—Civil Procedure Code (Act XIV of 1908), s. 30—Leave to sue given after commencement of

PARTIES—continued.

2. SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS—concluded.

action—Previous refusal—Validity of suit—Leave to sue under s. 30 of the Code of Civil Procedure need not necessarily precede the commencement

3 ADDING PARTIES TO SUITS.

(a) PLAINTIFFS.

17.—Malabar Law—Sui by one of two wulans to recover property demised on Kanom—Non-joinder of the only other wulan as co-plaintiff—Joinder as defendant—Evidence of adverse acts—Maintainability of suit—One of two wulans sued, to redeem property which had been demised to the defendants on kanom. He did not join the other wulan as a co-plaintiff, but impleaded him as a defendant. The other wulan had granted a renewal of the kanom, and plaintiff in his suit ignored that renewal and contended that it was invalid. On

Mad., 296, distinguished and doubted. MARITIL RAMAN NAIR v. NARAYANAN NAMUDIRIPAD (1902) . . . I. L. R., 26 Mad., 461

(b) RESPONDENTS.

18.—Act IV of 1892 (Transfer of Property Act), ss. 83, 89—Decree for sale—Decree assigned before the passing of an order absolute—Appeal—Assignee not made a party to appeal until after

is assigned before any order absolute is made, the assignee takes subject to all the liabilities resulting from the application of the doctrine of *lis pendens*. Such an assignee, for example, may properly be made a party, under s. 372 of the Code of Civil Procedure, to an appeal from the decree preferred against his assignors, and it is not competent to him to raise any defence, such as a plea of limitation, to the appeal which could not be raised by his assignors. **CHUNNI LAL v. ABOL ALI KHAN (1901)** [I. L. R., 23 All., 331]

PARTIES—continued.

4. SUBSTITUTION OF PARTIES.

(a) PLAINTIFFS.

19.—*Civil Procedure Code (Act XIV of 1882)*, ss. 372, 583 (21)—*Devolution of interest pending suit—Chota Nagpore Incumbered Estates Act (VI of 1876)*, s. 16—*Manager of incumbered estate—Owner—Appeal from order disallowing objections to substitution—Reports of cases.*—The words "devolution of interest," in s. 372 of the Civil Procedure Code, do not mean only devolution by

in case to persons, alleging themselves to be owners of the estate, to apply to be made plaintiffs in the place of the Manager, under s. 372 of the Civil Procedure Code. On an application for substitution

(1900)

[I. L. R., 28 Calc., 171; s.c., 5 C. W. N., 307

20.—*Civil Procedure Code (Act XIV of 1882)*, ss. 865, 867, 898, cl. (18), and 891—*Limitation Act (XV of 1877)*, Sch. II, Art. 175A—*Suit to recover possession—Death of the plaintiff pending suit—Legal representative—Practice—Procedure.*—On the 30th November, 1897, Mahadev Narayan sued to recover certain property from the defendants. He died on the 27th February, 1899, and his widow Balabai

opposed this, but took no objection to her right to appear as Mahadev's representative. In August, 1898, the first defendant filed his written statement, in which for the first time he raised the question as to Balabai's right to represent the deceased plaintiff Mahadev. The case subsequently came on for hearing, and issues were raised on the pleadings, the first issue being whether Balabai was Mahadev's legal representative. Evidence was taken on all the issues, and the Court found all of them in Balabai's favour, and passed a decree accordingly. The defendant

It found that Balabai was not the nearest heir and legal representative of the deceased plaintiff Mahadev, and thereupon it reversed the lower Court's decree, and dismissed the suit. On second appeal: Held by

PARTIES—continued.

4. SUBSTITUTION OF PARTIES—continued.

(a) PLAINTIFFS—continued.

CHANDAVARKAR and BATTI, JJ. (ASTON, J., dissenting), reversing the decree and remanding the case for a decision on the merits, that the lower Appellate Court was wrong in going into the question as to Balabai's right to represent the deceased plaintiff Mahadev, and in dismissing the suit on finding that she had no such right. *Per CHANDAVARKAR, J.*—The Subordinate Judge acted rightly under s. 365 of the Civil Procedure Code (Act XIV of 1882) in placing Balabai on the record. It was doubtful whether he could afterwards re-open the question and consider it at the hearing under s. 367. But, assuming that he could, he decided it with the other issues. His decision on that point was an order appealable under cl. (18) of s. 598. But the defendant did not appeal against that order. He

21.—*Civil Procedure Code (Act XIV of 1882)*, s. 365—*Application to be brought on record in place of deceased plaintiff—Order—Continuance of suit—Objection by defendant at late stage of case—Procedure.*—I instituted a suit to recover a debt, and died while the suit was pending, leaving no issue. Within two-and-a-half months of his decease, his widow applied, under s. 365 of the Code

A defendant then, after a number of witnesses had been examined, presented a petition, purporting to be

PARTIES—continued.

4. SUBSTITUTION OF PARTIES—continued.

(a) PLAINTIFFS—concluded.

bound to proceed with the suit after the name of the applicant had been entered on the record in place of the original plaintiff.

with a view to ascertaining whether his widow was entitled to prosecute the suit as his legal representative. Objection, if raised at all, should have been raised at the earliest opportunity, and failure to object then precluded the defendant from raising it, as he had done, at a late stage of the suit. *Oula v. Besspathar*, 1 L. R., 17 Mad., 209, and *Subbayya v. Saminadayyar*, 1 L. R., 18 Mad., 496, distinguished. *MEENATCHI ACHI v. ANANTHANARAYANA AYYAR* (1902) 1 L. R., 28 Mad., 224

22.—*Limitation Act (XV of 1877), s. 22—Civil Procedure Code (Act XIV of 1859), s. 437—Suit brought by executor—Beneficiaries, names of, subsequently substituted as plaintiffs—Where a suit for recovery of possession was brought by an executor on the 14th September, 1898, and the names of the beneficiaries who took possession of the estate during the pendency of the suit were substituted as plaintiffs on the 23rd November, 1900: Held that no new plaintiffs were substituted, within the meaning of s. 22 of the Limitation Act, and that the substitution of the names of the plaintiffs did not make a new suit. *JANILAL CROWDHURANI v. BROJO MOHINI CROWDHURANI* (1903) 7 C. W. N., 617*

(b) DEFENDANTS.

23.—*Civil Procedure Code (Act XIV of 1859), s. 368—Bringing one out of several legal representatives of a defendant on record—Effect of decree on the estate—Income Tax Act (II of 1886)—Sale of property for arrears of tax—Lis pendens—Purchase at sale for arrears of income tax—Subsequent sale in execution of prior mortgage decree—Duty of purchaser at revenue sale to pay amount due under mortgage and prevent sale in execution—Plaintiff, as the assignee of a mortgage executed by the father of first defendant, sued the mortgagee in 1891 on the mortgage.*

passed, which was never impeached as being fraudulent or collusive. As a fact, first defendant was not

Recovery Act) and purchased by second defendant in 1896. In 1897 the mortgaged property was sold in execution of the decree in plaintiff's suit on the

PARTIES—continued.

4. SUBSTITUTION OF PARTIES—continued.

(b) DEFENDANTS—concluded.

mortgage, and plaintiff became the purchaser, the

subsequently dispossessed by defendants Nos. 2 to 5, and he sold the property

prescribed by the Revenue Recovery Act to the recovery of arrears of income tax. *Held, further, that the share of the second defendant was*

24.—*Civil Procedure Code (Act XIV of 1859), ss. 368 and 32—Application for substitution to deceased defendant—Substitution of heirs under s. 368—Will of deceased defendant—Probate—Substitution of executors in place of heirs—S. 32—Bona fides—Limitation—Where an applicant obtained substitution of names of the heirs of a deceased defendant, under s. 368, Civil Procedure Code, through want of sufficient information that probate of the will of the said deceased had been granted, and subsequently applied, more than six months after the death, to have the names of the said heirs struck out and those of the executors substituted: Held that the application was one under s. 32, Civil Procedure Code, and that, even under s. 368, Civil Procedure Code, it was not barred, as the applicant had throughout had a bona fide desire to effect substitution of the proper legal representatives, and had shown sufficient cause for delay. *HOSSEIN ALI v. ABDUL RAHIM* (1903)*

PARTIES—continued.

4. SUBSTITUTION OF PARTIES.

(a) PLAINTIFFS.

19.—*Civil Procedure Code (Act XIV of 1892)*, ss. 372, 591 (21)—Devolution of interest pending suit—*Chota Nagpore Incumbered Estates Act (VI of 1876)*, s. 16—Manager of incumbered estate—Owner—Appeal from order disallowing objections to substitution—Reports of cases.—The words "devolution of interest," in s. 372 of the Civil Procedure Code, do not mean only devolution by death but also devolution by operation of law.

a case to persons, alleging themselves to be owners of the estate, to apply to be made plaintiffs in the place of the Manager, under s. 372 of the Civil Procedure Code. On an application for substitution made under s. 372 of the Civil Procedure Code, it was objected that the application could not be granted, but the Court overruled the objection and

(1900)

[L. L. R., 28 Calc., 171; a.c., 5 C. W. N., 307]

20.—*Civil Procedure Code (Act XIV of 1892)*, ss. 865, 867, 598, cl. (18), and 591—Limitation Act (XV of 1877), Sch. II, Art. 175A—Suit to recover possession—Death of the plaintiff pending suit—Legal representative—Practice—Procedure.—On the 30th November, 1897, Mahadev Narayan sued to recover certain property from the defendants. He died on the 20th December 1897.

to appear as Mahadev's representative. In August, 1898, the first defendant filed his written statement, in which for the first time he raised the question as to Balabai's right to represent the deceased plaintiff Mahadev. The case subsequently came on for hearing, and issues were raised on the pleadings, the first issue being whether Balabai was Mahadev's legal representative. Evidence was taken on all the issues, and the Court found all of them in Balabai's favour, and passed a decree accordingly. The

PARTIES—continued.

4. SUBSTITUTION OF PARTIES—continued.

(a) PLAINTIFFS—continued.

CHANDAVARKAR and BATTY, J.J. (ASTON, J., dissenting), reversing the decree and remanding the case for a decision on the merits, that the lower Appellate Court was wrong in going into the question as to Balabai's right to represent the deceased plaintiff Mahadev, and in dismissing the suit on finding that she had no such right. *Per* CHANDAVARKAR, J.—The Substantive Law.

defendant did not appeal against that order. He appealed against the whole decree, and in his appeal he objected to the order. Under s. 591, however, he could not do so. The order was not a decree, and if it was shown under there claiming falls to must be siled to

show that the order under s. 367 had affected the decision, the lower Appellate Court ought not to have reversed the decree of the Court of first instance. *BALABAI v. GANESH SHANKAR PANDIT* (1901)

[L. L. R., 27 Bom., 162]

21.—*Civil Procedure Code (Act XIV of 1892)*, s. 365—Application to be brought on record in place of deceased plaintiff—Order—Continuance of suit—Objection by defendant at late stage of case—Procedure.—I instituted a suit to recover a debt, and died while the suit was pending, leaving

undivided brother. The petitioner asked the Court to decide the question, under s. 367, as to who was the legal representative of the deceased plaintiff. The District Munsif heard the parties, and (without making an elaborate inquiry) held that the widow was the proper heir (and should produce a succession certificate before judgment should be delivered), but he also directed, in order to prevent future disputes, that the alleged undivided brother should be joined as a party. A petition signifying his consent to be so joined was filed by the last-mentioned person. Held that the order was right. Under s. 365 of the Code, the Court was

PARTITION—continued

1. RIGHT TO PARTITION—concluded.

(a) GENERALLY—concluded.

High Court) that "neither by the terms of the original grant nor of the subsequent orders of the ruling power, nor by family custom, nor by adverse possession has the defendant's branch of the family acquired a right to perpetual management of the

U. S. R., 41 BOM., 353:
[sc, L. R., 30 I. A., 77
7 C. W. N., 409

(b) PARTITION OF PORTION OF PROPERTY.

2.—*Reg. III of 1872—Partition of mal raiyati land in Chota Nagpur—Partition of trees and land—Ghatual*—As between two mal raiyats with whom a settlement has been made under Regulation III of 1872 there may be a joint

2 JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION.

3.—*Partition and accounts, suit for—Parties—Common manager, a necessary party if accounts for his period of managership claimed—Agreement to suit—*

PARTITION—continued.

2. JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION—concluded.

for the appointment of a Commissioner; that the common manager (defendant No. 1) and other defendants were rightly joined together in the same suit, because they made a common cause to defeat the plaintiff's claim for separation, and also because accounts were claimed for the period covered by the management of the defendant No. 1, and the other defendants are intimately connected with, and interested in taking, such accounts; and that, though it may be competent to the parties to enter into an agreement not to divide their joint properties for a limited period

4.—Act XIX of 1873 (North-Western Provinces Land-revenue Act), ss. 112, 113, 241 (f).—Trees a proper subject of partition by the Revenue authorities.—Question of title not raised at the time of partition, but subsequently by a suit.

partitioned along with it by the Revenue authorities.
MUNHAMAD SADIQ c. LAUTE RAM (F B, 1901)
[I. L. R., 23 ALL, 291]

5.—Act XII of 1857 (Bengal, N.W. P. and Aeron Civil Courts Act), s. 21—Act XIX of

s. 113 of the N.-H. L. LAND-REVENUE Act, 1873, a
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PARTITION—concluded.**3. MISCELLANEOUS CASES**

6.—*Meane profits—Joint family estate—Possession by one member—Partition—Meane profits—Remand.*—Plaintiff No. 1 and defendant No. 1 were brothers. Plaintiff sued defendant for partition of the joint family property. Defendant was in possession of the whole of certain landed property, including plaintiff's share in it. Defendant's explanation that he held it for three years as a security for debt due to him from plaintiff was

possession. Held by the Judicial Committee that the Judicial Commissioner had, under the circum-

GANGARAM v. SITARAM (F.C., 1902)

[8 C. W. N., 698

7.—*Order for sale—Partition Act (IV of 1893), s. 2—Preliminary decree—Order for sale—Civil Procedure Code (Act XIV of 1882), s. 896.*—Where, in a suit for partition, a Commissioner, appointed under s. 896, Civil Procedure Code, to make a partition after the preliminary decree had been passed, submitted a report, and the Court on consideration of the report was of opinion that the property could not conveniently be partitioned, and then passed an order for sale of the property under the provisions of s. 2 of the Partition Act (IV of 1893): Held that the Court could pass an order

8.—*Partition Act (IV of 1893),*

s. 2—*Order for delivery of share in house to decree-holder—Application in execution—Order for sale under Partition Act.*—S. 2 of the Partition Act of 1893 which empowers a Court to order a sale of

9.—*Trees—Act XIX of 1873 (N.W. P. Land-revenue Act), ss. 112, 113, 241 (f)—Trees a proper subject of partition by the Revenue*

RAM (F.D., 1901) . . . I. L. R., 23 All., 291

PARTITION ACT, 1893 (IV OF 1893).

—s. 2—

See **PARTITION—MISCELLANEOUS CASES**

[6 C. W. N., 128

I. L. R., 24 Mad., 639

PARTNERSHIP.

Col.

1. WHAT CONSTITUTES PARTNERSHIP . . . 804
2. RIGHTS AND LIABILITIES OF PARTNERS . . . 805
3. SUITS RESPECTING PARTNERSHIPS . . . "
4. DISSOLUTION OF PARTNERSHIP . . . 808

See **HINDU LAW—**

JOINT FAMILY—NATURE OF JOINT FAMILY;

[I. L. R., 25 Mad., 149

DEBTS, AND JOINT FAMILY BUSI-

NESS
See **LIMITATION ACT, 1877, ss. 7 AND 8**
AND **SCH. II, ART. 108.**

[I. L. R., 25 Mad., 26

See **PARTIES—PARTIES TO SUITS—JOINT FAMILY . . . I. L. R., 35 All., 378**

See **SALE OF GOODS.**

[I. L. R., 25 Mad., 580

—decree for dissolution of—

See **ATTACHMENT—SUBJECTS OF ATTACHMENT—DECREES.**

[I. L. R., 27 Bom., 556

See **MADRAS ABKARI ACT.**

[I. L. R., 24 Mad., 401

—suits respecting partnerships—

See **CIVIL PROCEDURE CODE, s. 163.**

[I. L. R., 25 Bom., 378

—registration of deed of partnership—

See **REGISTRATION ACT (III OF 1877), s. 17,**
CLS. (b) AND (h).

[I. L. R., 30 Calc., 1016

1. WHAT CONSTITUTES PARTNERSHIP.

does or does not exist depends on the real intention and agreement of the parties, and not upon the mere fact of participation in profits. *Davis v. Davis* (1891) 20 B. & S. 201. The facts that B and

Co." (the name of the firm), with his own initials or name underneath; that he occasionally signed with his own signature letters dealing with mere matters of detail; and that he purported to make firm offers to buyers and sellers, and initialled alterations in some contracts, do not constitute him a partner in that firm. The duties and responsibilities of a broker discussed. *MORRISON v. VERSCHOYLE* (1901)

[6 C. W. N., 429

PARTNERSHIP—continued.**2. RIGHTS AND LIABILITIES OF PARTNERS.**

2.—Abandonment of share—Account ordered—Account ordered on dissolution decreed—No abandonment by plaintiff—Effect of managing partner's not having kept clear accounts—Mode of taking account—However speculative the subject-matter of a partnership may be, it is a matter of inference, to be drawn from the facts of the case, whether there has or has not been an abandonment by a partner of his share; or loss thereof consequent upon his refusing or neglecting to take his part in the business, and allowing a length of time to elapse,

the management to his co-partner, now defendant. *Held* that there was no sufficient ground for the inference that the plaintiff had abandoned, or lost by laches, his position as a partner before this suit was brought. The defendant, on the other hand, while managing partner, had been engaged in dealings in timber peculiar to himself, in the same quarter as the partnership dealings and on a larger scale. His agent in the timber district had expended largely,

the partnership, and had not kept clear accounts. *Held* that the Courts below acted rightly in disallowing all charges made by the defendant that were disputed by the plaintiff and were unsupported by vouchers, notwithstanding that there might have been certain expenses disallowed which had been honestly incurred. **MOUNG THA HUYN v. MAH THUN MYAR** (P.C., 1900)

[I.L.R., 28 Calc., 53; s.c., 11 C.W.N., 114]

3.—Broker—Liability of principal—Scope of agent's authority—The duties and responsibilities of a broker discussed. An undertaking by a broker to refund advances made by third parties to his constituents, and giving a guarantee for the repayment

3 SUITS RESPECTING PARTNERSHIPS.

4.—Advances—Several firms—Common partner—Money lent by partner to his own firm—Practice—Same party cannot be plaintiff and defendant in one suit—Debtor and creditor—Death of plaintiff pending appeal—Defendant becoming plaintiff—Power of Court of Appeal to vary decree on grounds arising subsequently to decree—Partnership accounts—Contract Act (IX of 1872), s. 264—Guarantee—Liability of surety—Right of surety to indemnity—Where an individual is a common

PARTNERSHIP—continued.**3 SUITS RESPECTING PARTNERSHIPS—continued.**

partner in two houses of trade, no action can be brought by one house against the other house upon any transaction between them while such individual is a common partner. This doctrine is founded on

decree under appeal, not only for error, but also on grounds which have come into existence since it was

including his son Nagindas (defendant 2), to recover Rs. 61,419-3-1 in respect of advances made by the firm of Gordhandas Bhagwandas to the defendants' firm. The fifth defendant was sued as a surety for one of the partners (defendant 4) in the defendants' firm. The lower Court passed a decree for the amount claimed, against all the defendants. One of the

and have passed a decree that one moiety thereof should be paid to Parshotamdas and the other moiety treated as an item to the credit of Nagindas in the partnership accounts; (3) that, although, on

favour of strangers to the partnership. As to the liability of defendant 2 as surety, the Court *held* on

PARTNERSHIP—continued.**3. SUITS RESPECTING PARTNERSHIPS—continued.**

the evidence that defendant 5 had become a surety for the partnership debt. The partners were the principal debtors. But the liability of the surety is co-extensive with that of the principal debtor; therefore no decree could be now passed against defendant 5. Further, Nagindas, now the beneficial owner of the debt, was one of the principal debtors, and as such was bound to indemnify the plaintiff to repay a therefore his surety

SHEKH PURSHOTAMDAS CHATURDAS (1901)

[I. L. R., 25 Bom., 608]

5. — *Two firms—Common partners—Advances by one firm to the other—Suit to recover such advances—Partnership account necessary—Practice—Procedure*—The two plaintiffs were the owners and sole partners of the firm of Apaji Kashinath. They were also partners in the defendant firm of Ganesh Hari Narkar, in which there were three other partners besides themselves

Being partners in the firm, the plaintiffs appeared

NARKAR (1902)

[I. L. R., 26 Bom., 739]

6.—Joint Hindu family—Partners—Copartners not necessarily partners—Suit in the name of the owner of the firm—Parties—Adding parties—Civil Procedure Code (Act XIV of 1902), s. 27—The plaintiff sued, as owner of a firm, to recover a debt. The defendants pleaded that the plaintiff was joint with his father and brother, and contended that the latter were therefore partners in the firm and ought to be joined as plaintiffs. The

further held that it was too late to amend the plaint and to add them as parties, and it therefore dismissed the suit. On second appeal: *Held* (reversing the decree, and remanding the case) that, although a person carrying on business is a coparcener in a joint family, it does not necessarily follow that all his coparceners are his partners in that business, entitled with him to its rights and responsible with

PARTNERSHIP—concluded.**3. SUITS RESPECTING PARTNERSHIPS—concluded.**

remand it was found that the plaintiff's father and brother were partners, the Court ought to allow them to be brought in as parties

of the plaintiff
garmal
ADILAL
(1902)

[I. L. R., 27 Bom., 157]

DISSOLUTION OF PARTNERSHIP.

7.—Notice—Acknowledgment of debt by one partner—Indian Contract Act (IX of 1872), ss. 251 and 264—Limitation Act (XV of 1877), s. 21—The two defendants carried on business under the

other of the defendants on behalf of their firm,

to be done, and that defendant admitted the claim. It appeared that in 1892 the defendants had quarrelled, and by arbitration the presses were divided, the Ahmedabad press being given to the first defendant and the Bombay press to the second defendant. At the time of this suit the books and outstanding still remained to be divided. The second defendant now alleged that the partnership had been dissolved in 1892 to the plaintiff's knowledge, and contended that he was not bound by the acknowledgment signed in 1892 by the first defen-

business of the partnership (s. 251 of the Contract Act, IX of 1872); and (3) if the partnership had been dissolved at the date of the acknowledgment, then, whether notice of such dissolution had been given, or

Doos
v. 59, distin-
KALIDAS
Bom., 42

PASSENGER.**—by rail—**

See RAILWAY COMPANY—LIABILITY OF COMPANY . I. L. R., 28 Calc., 401

PATNI TENURE

See BENGAL REGULATION VIII of 1819, s II . . . 7 C. W. N., 111

See LIMITATION ACT, 1877, SCH II, ART 29 [I. L. R., 30 Calc., 440

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS, [8 C. W. N., 794

—Merger of patni interest in zamindar, who purchases it—Ben. Reg. VIII of 1819, sale held under—Transfer of Property Act (IV of 1882), s 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

PATNIDAR.**—liability of—**

See ZAMINDARI DAKS, [I. L. R., 28 Calc., 293

—right of—

See ABATEMENT OF RENT [7 C. W. N., 180

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—PARTIES [7 C. W. N., 377

PATTA.

See POTTAM

PATWARI.

See NORTH-WESTERN PROVINCES AND OUDH KANUNGS AND PATWARIS ACT [I. L. R., 23 All., 505

PAUPER SUIT.

Col.

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| 1. SUITS | 810 |
| 2. APPEALS | „ |

See LIMITATION ACT, 1877—

s. 4;

[I. L. R., 28 Calc., 427

s. 5

[I. L. R., 30 Calc., 790

See TRANSFER OF CIVIL CASE—GENERAL CASES . . I. L. R., 24 All., 366

PAUPER SUIT—continued.**1. SUITS.**

1.—Court-fees—Civil Procedure Code (Act XIV of 1852), s 411—Court-fees—First charge on subject-matter of suit—Purchase of portion of subject-matter at sale to recover Court-fees—Subse-

connection with the pauper suit, and the present

VELOTH ASSEKAR (1902)

[I. L. R., 25 Mad., 733

2.—Religious Endowments Act (XX of 1863), s. 18—Suit sanctioned for removal of trustees—Leave to sue in forma pauperis—Civil Procedure Code (Act XIV of 1852), ss 402, 407.—The provisions of Ch. XXVI of the Code of Civil Procedure do not preclude a person, who has obtained leave to sue under s 18 of the Religious Endowments Act for the removal of the trustees of a temple, from being permitted to sue in forma pauperis GURUSANI CHETTI v KRISHNASANI NAIKAR (1901) . . I. L. R., 24 Mad., 419

■ APPEALS

3.—Application for leave to appeal—Code of Civil Procedure (Act XIV of 1852), ss 404, 492 —Presentation of application for leave to appeal in forma pauperis—Necessity for personal application—Application of rules in Ch. XXVI after appeal in forma pauperis

stances) by the applicant in person, does not apply to an application under s 492 to be allowed to appeal as a pauper After an application has been presented under s 492, all action taken subsequent to such presentation is, by the terms of s. 492, to be subject to the rules contained in Ch. XXVI of the Code, but the presentation of the application itself is not subject to those rules. *In re Narasi*, I. L. R., 8 Mad., 504, not followed. *MAITHI v. SOMAPPA BANTA* (1902) I. L. R., 28 Mad., 389

4.—Letters Patent, High Courts, 1863, cl. 6—Presentation of appeal by a person other than an advocate vakil or attorney of the Court, or a suitor—Presentation by agent of a

PAUPER SUIT—concluded.**2. APPEALS—concluded.**

pardahnashin woman—Civil Procedure Code, ss. 401 et seqg.—Suit in forma pauperis—Decree passed in ignorance of plaintiff's death—Consent order for re-trial—Objection to plaintiff's representative suing in forma pauperis—Estoppel.—The plaintiff in a suit brought in forma pauperis died,

5.—Death of plaintiff—Civil Procedure Code, ss. 401 et seqg.—Suit in forma pauperis—Decree passed in ignorance of plaintiff's death—Consent order for re-trial—Objection to plaintiff's representative suing in forma pauperis—Estoppel.—The plaintiff in a suit brought in forma pauperis died,

On this appeal an order was passed, by consent of parties, sending back the suit to be re-tried on the merits as between the defendant and the person nominated by him as plaintiff, and it was so

[I. L. R., 25 All, 137]

6.—Right of appeal—Civil Procedure Code, ss. 403, 409, 593—Suit in forma pauperis—Appeal—Propriety of order allowing plaintiff to sue in

7.—Letters Patent, High Courts, 1865, cl. 15, "Judgment"—Order refusing leave to appeal in forma pauperis.—There is no appeal, under cl. 15 of the Letters Patent, against an order, passed by a single Judge, under s 592 of the Code of Civil Procedure, refusing leave to appeal in forma pauperis. Bys 592, a discretion is vested in the Judge to allow or disallow the application, and an order passed in the exercise of such a discretion is not a "judgment" within the meaning of cl. 15 of the Letters Patent. *Sriramulu v. Ramaswami*, I L. R., 23 Mad., 109; *Peskataramas Ayyar v. Madalal Annal*, I. L. R., 23 Mad., 169, and *Srimants Raja Durga Naide v. Srimants Raja Mallikarjuna Naide*, I. L. R., 24 Mad., 359, followed. *APPASANI PILLAI v. SOMASUNDRA MUDALIAR* (1902)

[I. L. R., 28 Mad., 437]

PAWNOR AND PAWNEE.

See LIMITATION ACT, 1877, Sec. II, ART. 57 . . . I. L. R., 24 All, 251

PAYMENT.

See INSTALLMENTS.

—made under forged will—

See WILL—VALIDITY OF WILL.
[8 C. W. N., 787]

—of whole debt by one debtor—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

—on account of debt—

See LIMITATION ACT, 1877, s. 20

—specified time for—

See LIMITATION ACT, 1877, Sec. II, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATES.

PAYMENT INTO COURT.

See BENGAL TENANCY ACT, s 150.

[I. L. R., 30 Calc., 247]

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE

[I. L. R., 24 All, 478]

—*Civil Procedure Code (Act XIV of 1882),*

forego the forfeiture. *SANKASIVA AYTAR v. VEDINADASAMI* (1901) . I. L. R., 25 Mad., 535

PAYMENT TO STAY OR SET ASIDE SALE.

See CONTRIBUTION, SUIT FOR—VOLUNTARY PAYMENT.

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

PEACE.

See RECOGNIZANCE TO KEEP PEACE.

PENAL CODE.

—application of—

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION—OFFENCE COMMITTED ON THE HIGH SEAS.
[I. L. R., 25 Bom., 636]

CODE—continued.

See PUBLIC SERVANT.

[I. L. R., 28 Calc., 344]

U. cl. sixth—

See LANDMARKS

[I. L. R., 30 Calc., 1084]

—s. 23—

See CRIMINAL BREACH OF TRUST.

[6 C. W. N., 203]

—s. 24—

See CRIMINAL BREACH OF TRUST.

[6 C. W. N., 203]

—ss. 24, 25—

See FORGERY . . . 8 C. W. N., 897

—s. 34—

See BENGAL EXCISE ACT (VII OF 1878).

s. 50 . . . I. L. R., 29 Calc., 486

—s. 44—

See CRIMINAL INTIMIDATION.

[I. L. R., 30 Calc., 418]

—s. 70—

See APPEAL IN CRIMINAL CASE—CRIMINAL PROCEDURE CODE.

[I. L. R., 23 All., 497]

—s. 79—

See WRONGFUL CONFINEMENT.

[I. L. R., 30 Calc., 95]

—s. 84—

See INSANITY . . . I. L. R., 28 Calc., 618

—ss. 84, 85—

See INSANITY . . . I. L. R., 29 Calc., 493

—s. 95—

See CRIMINAL BREACH OF TRUST

[I. L. R., 29 Calc., 489]

—ss. 98 to 106—

See PRIVATE DEFENCE, RIGHT OF

See RIOTING . . . I. L. R., 24 All., 298

—s. 99—

See ABSCONDING OFFENDER.

[I. L. R., 29 Calc., 417]

See THUMB IMPRESSIONS

[I. L. R., 30 Calc., 97]

—ss. 107, 108, 109—

See CONSPIRACY. I. L. R., 28 Calc., 797

—s. 109—

See ABETMENT . . . 7 C. W. N., 556

[I. L. R., 24 Mad., 523]

PENAL CODE—continued.

—s. 109—concluded.

See BIGAMY . . . 8 C. W. N., 343

See CHARGE—FORM OF CHARGE—FORGERY . . . I. L. R., 30 Calc., 622

See CRIMINAL PROCEEDINGS

[I. L. R., 28 Calc., 104]

See SANCTION FOR PROSECUTION—NATURE, FORM AND SUFFICIENCY OF SANCTION

[I. L. R., 30 Calc., 805]

—s. 114—

See BENGAL EXCISE ACT (VII OF 1878), s. 53 . . . I. L. R., 29 Calc., 486

See UNLAWFUL ASSEMBLY.

[5 C. W. N., 250]

—s. 141—

See UNLAWFUL ASSEMBLY.

—Clause second—

See WARRANT OF ATTACHMENT.

[I. L. R., 29 Calc., 244]

—s. 143—

See post, s. 186 . . . I. L. R., 30 Calc., 285

See ABSCONDING OFFENDER.

[I. L. R., 29 Calc., 417]

See UNLAWFUL ASSEMBLY.

[5 C. W. N., 368]

[I. L. R., 25 Mad., 624]

—s. 144—

See UNLAWFUL ASSEMBLY.

[5 C. W. N., 250]

[I. L. R., 24 Mad., 124]

—s. 147—

See CRIMINAL PROCEDURE CODE, s. 437.

[5 C. W. N., 72]

See KIDNAPPING . . . 6 C. W. N., 208

See POLICE ACT (V OF 1861), ss. 17, 19

[I. L. R., 28 Calc., 411]

See PRIVATE DEFENCE, RIGHT OF

[I. L. R., 24 All., 143]

See RIOTING . . . I. L. R., 24 All., 298

See WARRANT OF ATTACHMENT

[I. L. R., 29 Calc., 244]

—s. 148—

See HURT—GRIEVOUS HURT

[8 C. W. N., 98]

See UNLAWFUL ASSEMBLY.

[7 C. W. N., 512]

—s. 149—

See CHARGE TO JURY—MISDIRECTION.

[I. L. R., 29 Calc., 379]

See HURT—GRIEVOUS HURT.

[8 C. W. N., 98]

PENAL CODE—continued.

— s. 149—concluded.

See POLICE ACT (V OF 1861) ss. 17, 19.
[I. L. R., 28 Calc., 411]

See UNLAWFUL ASSEMBLY.

[7 C. W. N., 512]

— s. 150—

See UNLAWFUL ASSEMBLY.

[I. L. R., 29 Calc., 214]

— s. 153—

See RELIGION, OFFENCES RELATING TO
[I. L. R., 26 Mad., 554]

— s. 154—

See RIOTING . I. L. R., 28 Calc., 504

— ss. 154, 155—

See RIOTING . . . 7 C. W. N., 245

See SESSIONS JUDGE, JURISDICTION OF—
ORDER FOR RE-TRIAL ON APPEAL

[7 C. W. N., 301]

— s. 157—

See UNLAWFUL ASSEMBLY.

[I. L. R., 29 Calc., 214]

— s. 161—

See ACCOMPLICE. I. L. R., 28 Bom., 193

— ss. 161, 165—

See PUBLIC SERVANT . 5 C. W. N., 332

— s. 174—

See COMMISSION—CIVIL CASES.

[6 C. W. N., 927]

See CONTEMPT OF COURT—PENAL CODE,
s. 174

— ss. 174, 175—

See PUBLIC SERVANT.

[I. L. R., 29 Calc., 236]

— s. 177—

See CONTEMPT OF COURT—PENAL CODE,
s. 174 . . . 5 C. W. N., 181

— s. 182—

See APPEAL IN CRIMINAL CASE—CRIMINAL
PROCEDURE CODE

[I. L. R., 25 All., 534]

See FALSE CHARGE . 5 C. W. N., 727
[I. L. R., 26 Mad., 640]

See SANCTION FOR PROSECUTION—

POWER TO GRANT SANCTION;

[I. L. R., 27 Bom., 130]

REVOCATION OF SANCTION.

[I. L. R., 27 Bom., 130]

— s. 183—

See ABSCONDING OFFENDER

[I. L. R., 29 Calc., 417]

PENAL CODE—continued.

— s. 183—concluded.

See CRIMINAL PROCEDURE CODE, s. 476.
[7 C. W. N., 423]

See WARRANT OF EXECUTION.

[6 C. W. N., 391]

— s. 186—

See PUBLIC SERVANT.

[I. L. R., 29 Calc., 236]

See WARRANT OF EXECUTION.

[5 C. W. N., 391]

1.—Survey Act (Ben. Act V of 1876), s. 45—
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would not amount to an offence under s. 186 of the
Penal Code. MOULA BUX v. KING-EMPEROR (1901)

[8 C. W. N., 120]

2.—Public servant—Obstruction—Distraint—
Crops—Sanction—Unlawful assembly—Bengal
Tenancy Act (VIII of 1885), ss. 123 and 126—
Criminal Procedure Code (Act V of 1898), ss. 4
and 195—Penal Code (Act XLV of 1860), ss. 143
and 136.—A peon was ordered by the Civil Court,
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PENAL CODE—continued.

—s. 194—

See CRIMINAL PROCEEDINGS.

[I. L. R., 24 Mad., 675]

—s. 208—

—Attachment of crops in execution of certificate under Public Demands Recovery Act—Want of sanction not occasioning failure of justice—Code of Criminal Procedure (Act I of 1898), ss. 195, 438 and 537—Public Demands Recovery Act (Bengal Act I of 1935), ss. 7, 8, 19 and 23—The cutting and carrying off crops, which the accused

the force and effect of a decree of a Civil Court.

—s. 211—

See FALSE CHARGE.

—s. 215—

—Theft—Receiving gratification to help the owner to recover stolen property—s. 215 not

apply to
in league
account
property
as in his

power to cause the thief to be apprehended and convicted of the offence QUEEN-EMPRESS v. MUHAMMAD ALI (1900) . I. L. R., 23 All., 81

—s. 216B—

—Definition—Meaning of term "harbouring" Held, with regard to the definition contained in s. 216B of the Indian Penal Code, that the words "assisting a person in any way to evade apprehension" are meant to point out some method *quodam generis* with those specified in the earlier portion of the section. They will not include the assisting of an accused person to escape by merely telling him to the police as to his whereabouts ENFENOR v. HUSAIN BAKSHI (1903) . I. L. R., 23 All., 261

—s. 224—

See ESCAPE FROM CUSTODY

See WARRANT OF ARREST—CRIMINAL CASES . . . 5 C. W. N., 447

—s. 225—

See JOINDER OF CHARGES

[I. L. R., 29 Calc., 385]

PENAL CODE—continued

—s. 225B—

See WARRANT OF ARREST—

CIVIL CASES; ■ C. W. N., 848
[6 C. W. N., 815]

CRIMINAL CASES.

[I. L. R., 28 Calc., 399]

—s. 232—

See COUNTERFEITING COIN.

[I. L. R., 23 All., 420]

—s. 268—

See GAMBLING . . . 7 C. W. N., 710

—s. 296—

See RELIGION, OFFENCES RELATING TO.

[I. L. R., 26 Mad., 554]

—s. 298—

See MISCHIEF . I. L. R., 24 All., 155

—s. 300—

See MURDER.

—s. 303—

See INSANITY I. L. R., 29 Calc., 493

See MURDER

—s. 304—

See HURT—GRIEVOUS HURT.

[6 C. W. N., 98]

See MURDER

—s. 317—

See ABANDONMENT OF CHILDREN

[I. L. R., 24 Mad., 693]

—s. 323—

See CRIMINAL PROCEDURE CODE, s. 437

[5 C. W. N., 72]

—s. 324—

See UNLAWFUL ASSEMBLY

[7 C. W. N., 512]

—s. 325—

See WARRANT OF ATTACHMENT

[I. L. R., 29 Calc., 244]

—s. 326—

See HURT—GRIEVOUS HURT.

[6 C. W. N., 98]

—s. 336—

See RASH AND NEGLIGENT ACT

[5 C. W. N., 376]

—ss. 339, 341—

See WRONGFUL RESTRAINT

—s. 343—

See CRIMINAL PROCEDURE CODE, s. 437,

[5 C. W. N., 72]

See WRONGFUL CONFINEMENT

[I. L. R., 30 Calc., 95]

PENAL CODE—continued.

—s. 350—

See CRIMINAL PROCEDURE CODE, s. 522.
[5 C. W. N., 250]

See POSSESSION, ORDER OF CRIMINAL
COURT AS TO—DISPOSSESSION BY CRIMINAL
FORCE . I. L. R., 25 All, 341

—s. 351—

See THUMB IMPRESSIONS.
[I. L. R., 30 Calc., 97]

—s. 352—

See ASSAULT ON PUBLIC SERVANT.
[5 C. W. N., 202]

—s. 353—

See ASSAULT ON PUBLIC SERVANT
[5 C. W. N., 202]

See POLICE ACT (V of 1861), ss. 17, 19.
[I. L. R., 28 Calc., 411.]

See THUMB IMPRESSIONS.
[I. L. R., 30 Calc., 97]

See WARRANT OF ARREST—
CIVIL CASES; . 5 C. W. N., 843
CRIMINAL CASES ■ C. W. N., 447
[I. L. R., 28 Calc., 389]

—ss. 361, 363, 366—

See KIDNAPPING.

—s. 376—

See ADULTERY I. L. R., 29 Calc., 415

—ss. 378 to 380—

See THEFT.

—s. 390—

See ROBBERY . . 5 C. W. N., 372

—ss. 395 to 397, 402—

See Dacoity.

—s. 403—

See CRIMINAL MISAPPROPRIATION.
[5 C. W. N., 34]

—s. 405—

See COURT OF WARDS . 5 C. W. N., 248
See CRIMINAL BREACH OF TRUST.
[5 C. W. N., 203]

—s. 408—

See CRIMINAL BREACH OF TRUST.
[I. L. R., 28 Calc., 362]

See JOINDER OF CHARGES.
[I. L. R., 24 All, 254]

—s. 408—

See CRIMINAL BREACH OF TRUST.
[5 C. W. N., 203
I. L. R., 29 Calc., 489]

PENAL CODE—continued.

—s. 411—

See CHARGE TO JURY—SPECIAL CASES—
STOLEN PROPERTY.

[I. L. R., 26 Mad., 487]

See CRIMINAL PROCEEDINGS.
[I. L. R., 28 Calc., 104]

See JOINDER OF CHARGES.
[I. L. R., 29 Calc., 387]

See STOLEN PROPERTY, OFFENCES RELAT-
ING TO . I. L. R., 23 All, 268

—s. 414—

See CRIMINAL PROCEEDINGS
[I. L. R., 28 Calc., 104]

—s. 415—

See CHEATING . . ■ C. W. N., 255

—s. 417—

See CHARGE—FORM OF CHARGE—FOR-
GERY . . I. L. R., 30 Calc., 822

See FORGERY . I. L. R., 25 Mad., 729

—s. 420—

See MISCHIEF . I. L. R., 24 All, 155

—s. 422—

petitioners mortgaged their property, and under the terms of the agreement certain persons were

money. The Court, however, made no order on this application. The petitioners were convicted of an attempt to commit an offence under s. 422 of the Penal Code. Held that, having regard to the relation between the petitioners and their managers, at whose instance the proceedings were taken, it could not properly be said that an attempt to

to get this money was more to put an end to the management than to prevent the money from being available for payment of their debt under the mortgage. *Nobin Chander Modak (1874)*, 23 W. R., Cr., 46, referred to. *HABA KUMAR CHOWDHURANI v. SAVI* (1900)
[I. L. R., 28 Calc., 314; a.c., 5 C. W. N., 174]

PENAL CODE—continued.

—s. 423—

See FALSE STATEMENT.

[I. L. R., 25 All., 31]

—s. 424—

1.—*Dishonest removal of property to avoid distraint—Distraint for arrears of rent under the Rent Recovery Act—Absence of presumption in favour of its legality—Onus of proof on prosecution to prove legality—Conviction in absence of such proof—Illegality.*—Where a distraint is made under the Rent Recovery Act for arrears of rent, there is no presumption that it is legally made; and, if persons are charged with having dishonestly removed property to avoid it, the prosecution must prove that it was a legal distraint. In the absence of such proof, persons who have resisted the distraint, or have removed their property to avoid it, cannot be convicted of an offence, inasmuch as they had a right of private defence of their property unless the distraint was legal. *KING-EMPEROR v. GOPALASAMY* (1902). I. L. R., 25 Mad., 729

2.—*Dishonest removal by tenants of crops—Raiyats holding on varam tenure—Crops in possession of raiyats.—No taking out of possession—Offence.*—If raiyats holding land on varam tenure remove crops for the purpose of protecting them from injury or damage owing to delay or refusal on the part of the zamindar to perform his part in the

—s. 426—

See MISCHIEF

—s. 434—

See LANDMARK I. L. R., 30 Calc., 1084

—ss. 441, 448—

See CRIMINAL TRESPASS

[I. L. R., 26 Bom., 558]

—s. 457—

See CRIMINAL TRESPASS

[I. L. R., 23 All., 82]

—ss. 463, 464—

See FORGERY . . . 6 C. W. N., 382

—s. 466—

See CHARGE—FORM OF CHARGE—FALSE EVIDENCE AND PERJURY.

[I. L. R., 28 Calc., 434]

See FORGERY . . . I. L. R., 23 All., 84

PENAL CODE—continued.

—s. 467—

See CHARGE—FORM OF CHARGE—FORGERY. . . I. L. R., 30 Calc., 822

See FORGERY . . . 5 C. W. N., 897
[8 C. W. N., 382]

—s. 468—

See FORGERY . . . I. L. R., 25 Mad., 726

—s. 471—

See CHARGE—FORM OF CHARGE—

FALSE EVIDENCE AND PERJURY;

[I. L. R., 28 Calc., 434]

FORGERY

[I. L. R., 30 Calc., 822]

See FORGERY . . . 5 C. W. N., 897
[I. L. R., 23 All., 84]

—s. 474—

See FORGERY . . . 5 C. W. N., 382

—ss. 476, 482—

See TRADE MARK.

[I. L. R., 26 Bom., 289]

—s. 489C—

See JOINDER OF CHARGES.

[I. L. R., 29 Calc., 387]

—Ch. XX (ss. 493 to 498)—

See ADULTERY . . . 7 C. W. N., 143

—ss. 494, 495—

See BIGAMY

—s. 497—

See ADULTERY

—s. 498—

See ADULTERY

7 C. W. N., 143

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES

[I. L. R., 25 All., 209]

—“*Enticing away*” a woman—*Charge of abetment against the woman enticed—Validity.*—Where a man has been convicted of enticing away a woman, under s. 498 of the Penal Code, the woman who was enticed away by him cannot be guilty as an abettor. Whether a woman could be convicted of abetting the taking away of herself, within the meaning of s. 498—*Quære.* IN RE BALAMBAL (1902)
[I. L. R., 26 Mad., 463]

—s. 499, Expln. I—

See DEFAMATION—IMPUTATION ON A WIFE . . . I. L. R., 25 Bom., 151

—ss. 499, 500—

See DEFAMATION

PENAL CODE—concluded.**—s. 500—**

See **APPEAL IN CRIMINAL CASE—CRIMINAL PROCEDURE CODE.**

[I. L. R., 25 All., 534]

See **DEFAMATION.**

[I. L. R., 26 Mad., 43, 464]

See **PRIVILEGED COMMUNICATION.**

[7 C. W. N., 246]

—s. 503—

See **CRIMINAL INTIMIDATION**

[I. L. R., 30 Calc., 418]

—s. 504—

See **MISCHIEF** . I. L. R., 24 All., 155

—s. 506—

See **CRIMINAL INTIMIDATION.**

[I. L. R., 30 Calc., 418]

—s. 511—

See *ante*, s. 422 . I. L. R., 28 Calc., 314

See **ATTEMPT TO COMMIT OFFENCE**

[I. L. R., 23 All., 78]

" 25 All., 75

See **CHARGE—FORM OF CHARGE—FORGERY** . I. L. R., 30 Calc., 823

See **FORGERY** . I. L. R., 25 Mad., 726

PENALTY.

See **INTEREST—STIPULATIONS AMOUNTING OR NOT TO PENALTIES.**

See **STAMP ACT (II of 1892)**, ss. 35 AND 42 . I. L. R., 24 All., 374

—relief against, in execution proceedings—

See **EXECUTION OF DECREE—EXECUTION OF DECREE ON OR AFTER AGREEMENTS OR COMPROMISES.**

[I. L. R., 24 Mad., 265]

PENSION.

See **ATTACHMENT—SUBJECTS OF ATTACHMENT—ANNUITY OR PENSION—POLITICAL PENSIONS.**

PENSIONS ACT (XXIII OF 1871).**—ss. 4 and 6—**

—*Pension—Right to receive land-revenue granted by Government as a reward—Mortgage of right—Suit for foreclosure—Certificate of Collector not forthcoming—Procedure.*—S. 4 of the Pensions Act, 1871, applies to a heritable right to receive land-revenue granted by the Government as a reward for services rendered. Where, therefore, such a right to receive land revenue was included along with other

PENSIONS ACT. (XXIII OF 1871)—concluded.**—ss. 4 and 6—concluded.**

was sustained. *Jijaji Irtabji Raje v. Balkrishna Mahadeo* (1892), I. L. R., 17 Bom., 169, followed. *IRTIJAH ALI c. SHAM SUNDAR* (1902)

[I. L. R., 25 All., 73]

—s. 11—

—*Civil Procedure Code (Act XIV of 1882), s. 266*

(g)—*Attachment of pensions payable to descendants of reigning family in Ceylon—Pensions payable in British India—Validity of attachment.*

These pensions were attached in execution of certain decrees. Upon application being made by the pensioners to have the attachments set aside: Held that the pensions were exempt from attachment, as being "political pensions" within the meaning of s. 266 (g). *Per* SIR ARNOLD WHITE, C.J.—If the

enforceable in Ceylon. *Ghamshah Lal v. Bhansali*, I. L. R., 5 Bom., 249, and *Bhambhar Nath v. Indud Ali Khan*, I. L. R., 18 Calc., 216, referred to. *MUTHUSAMI NAIDU c. ALAGIA MANAVALA SINGMALA RAJA* (1902) . I. L. R., 26 Mad., 423

PEON.

See **PUBLIC SERVANT.**

[I. L. R., 28 Calc., 344]

PERJURY.

See **FALSE EVIDENCE.**

PERMANENT SETTLEMENT.

See **EVIDENCE—CIVIL CASES—MAPS**

[I. L. R., 30 Calc., 291
7 C. W. N., 649]

PERMANENT TENANCY.

See **LANDLORD AND TENANT—NATURE OF TENANCY—PERMANENT TENANCY.**

PERPETUITIES.See LIFE ESTATE . . . **5 C. W. N., 569**See **MAHOMEDAN LAW—ENDOWMENT.**
[I. L. R., 30 Calc., 686]**PETITION.**

—admissibility of, as evidence—

See **EVIDENCE CIVIL CASES—MISCELLANEOUS DOCUMENTS—PETITIONS.****PETROLEUM ACT (VIII OF 1899).**

—ss. 1 (3), 11 and 15—Also the repealed Act (XII of 1886), ss. 2 (2), 10, 15—Kerosine oil, possession of, exceeding statutory quantity—Notification in Gazette extending repealed Act to Cuttack—New Act not expressly preserving same—General Clauses Act (I of 1877), ss. 8, 24, notification preserved by—Fresh notification, if necessary—Notification, if “order.”—The accused had been convicted under ss. 11 and 15 of the Indian Petroleum Act, 1899, for being in possession of 148 tins of kerosine oil at Cuttack, a place to which similar provisions of the Petroleum Act of 1886 had been extended by a notification in the Calcutta Gazette dated 7th April, 1891. Held that the notification of 1891 made the present Act applicable to Cuttack, and the conviction was right. That notification has been preserved by the operation of ss. 8 and 24 of the General Clauses Act, although the Act of 1886 itself was repealed and there is no provision in the present Act expressly preserving the notifications issued under the provisions of the repealed Act. The notification was an “order.”

L. L. R., 29 Calc., 311

PHOTOGRAPHY.

—photographic fac-simile of will attached to probate—

See **PROBATE—OF WHAT DOCUMENTS GRANTED** . . . **I. L. R., 29 Calc., 311****PLAINT.**

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| | | |
|----|---|-----|
| 1 | GENERAL CONSTRUCTION OF PLEADINGS . . . | 826 |
| 2 | FORM AND CONTENTS OF PLAINT— | |
| | (a) CAUSE OF ACTION . . . | 827 |
| | (b) FRAME OF SUITS GENERALLY . . . | 828 |
| 3 | VERIFICATION AND SIGNATURE . . . | 828 |
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| 6. | PROCEDURE . . . | 830 |

PLAINT—continued.See **COURT-FEES ACT, s. 23.**
[I. L. R., 25 Mad., 380]See **MULTIFARIOUSNESS.**See **PLEADINGS.**See **VARIANCE BETWEEN PLEADING AND PROOF.**

—amendment of—

See **APPELLATE COURT—EXERCISE OF POWERS—SPECIAL CASES—PLAINT, AMENDMENT OF.**See **BENGAL TENANCY ACT, s. 188.**
[8 C. W. N., 326]See **CIVIL PROCEDURE CODE, s. 424**
[I. L. R., 30 Calc., 36]

—contents of—

See **BENGAL TENANCY ACT, s. 149.**
[7 C. W. N., 615]

—form and contents of; boundaries—

See **BENGAL TENANCY ACT, s. 148, CL. (b).**
[5 C. W. N., 121]

—insufficiency of—

See **ADMINISTRATION** . . . **[5 C. W. N., 162]**

—prayer for “such other relief as the Court might think fit”—

See **INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY**
[I. L. R., 28 Bom., 136]

—presentation of—

See **LIMITATION ACT, 1877, s. 4.**

—rejection of—

See **APPEAL—ORDERS—ORDER REJECTING A PLAINT**See **CIVIL PROCEDURE CODE, s. 424.**
[I. L. R., 25 All., 187]See **MAHATDARS' COURTS ACT (BOM. ACT III of 1876), s. 13**
[I. L. R., 25 Bom., 82]

—return of—

See **APPEAL—ORDERS** . . . **[I. L. R., 25 All., 174]**See **SMALL CAUSE COURT, JURISDICTION—TITLE, QUESTION OF.**
[6 C. W. N., 687]

—signature of—

See **CIVIL PROCEDURE CODE, s. 432.**
[I. L. R., 25 All., 635]**1 GENERAL CONSTRUCTION OF PLEADINGS.**

1—Pleadings—Reliefs of a nature different from the case made out in the plaint—No declaration ought to be granted where the case upon which

PLAINT—continued

1. GENERAL CONSTRUCTION OF PLEADINGS—concluded.

the declaration is sought to be obtained not only is not the case made in the plaint but is one that is wholly inconsistent with it. *Eshen Chunder Singh v. Shama Churn Bhutta* (1866), 11 M. I. A., 7, referred to. *RAI JATINDRA NATH CHAUDHURI v. AMRITA LAL BAGCHI* (1900) . 5 C. W. N., 20

2 FORM AND CONTENTS OF PLAINT.

(a) CAUSE OF ACTION.

2.—Multifariousness.—A plaintiff's cause of action is every fact which a plaintiff must prove to support his case. A cause of action arises when a legal right is infringed, and the date and place of its accrual must be inserted in the plaint. Where the plaintiff claimed the ownership of the properties in suit through her late husband, and

Held that there were separate causes of action against separate sets of persons, and the trial could not proceed as upon a single cause of action. *RAM PRASAD v. SACHIN DASSI* (1902) . 6 C. W. N., 585

(b) FRAME OF SUITS GENERALLY.

3.—Limitation Act (XV of 1877), Sch. II, Art. 116—"Contract in writing, registered," signed by one party thereto—Sufficient disclosure of cause of action—During the course of certain litigation in which B was suing A on a promissory note, a compromise was arrived at under which A undertook to execute a mortgage in favour of B, and, in consideration thereof, B undertook to withdraw an appeal which was pending at the time. The mortgage was executed, and the undertaking to withdraw the appeal was embodied in the mortgage deed, which was registered, but signed only by A. B, in breach of his undertaking, permitted the appeal to proceed, and obtained a decree on 20th November, 1891, which he subsequently executed against A, recovering the value of the promissory note upon which he had originally sued. He also retained the mortgage which had been executed in the compromise. A now sued to recover from B the amount which B had collected under the decree, stating the cause of action as having arisen on the date of that collection, namely, 29th October, 1893, when it was contended that the suit was not maintainable inasmuch as the decree had not been set aside, and that, even if treated as a suit for damages for breach of the undertaking to withdraw the appeal, it was barred, as the date of the breach was the date of the decree (viz., 20th November, 1891), which had been wrongly obtained, and this suit had not been brought within three years from that date, the plaint having been filed on 14th September, 1896. *Held* that, inasmuch as all necessary allegations were made in the plaint, the contract and its breach being alleged, and as the defendant understood what

PLAINT—continued.

2. FORM AND CONTENTS OF PLAINT—concluded.

(b) FRAME OF SUITS GENERALLY—concluded.

the claim against him was, the plaint sufficiently disclosed a cause of action for damages for the breach of contract. *Held, also*, that the undertaking in the mortgage was "an agreement in writing, registered", within the meaning of Art. 116 of Sch. II to the Limitation Act, and that consequently the claim was not barred. The fact that the instrument was not signed by B did not take the case out of the operation of that article. *KOTAPPA v. VALLU ZAMINDAR* (1901) . . . I. L. R., 25 Mad., 50

3 VERIFICATION AND SIGNATURE.

4.—Verification—Civil Procedure Code (Act XIV of 1882) . . .

Corporation—effect of, on Bank of Bengal as the Officiating Inspector of Branches, Bank of Bengal, and there was nothing to show that he was not the officer authorised to sue or verify the petition on behalf of the Bank at Chittagong, or that he was not able to depose to the facts of the case; *Held* that the petition was properly verified under s. 435, Civil Procedure Code. Defective verification, if there is no reason to suppose that anyone is

OF AKTAR (1900) . . . 6 C. W. N., 91

5.—Foreign Corporation, suit by—Foreign Company not registered under the Indian Companies Act, 1882—Plaint, verification of, by the Manager of an unregistered Company

out being registered under the Indian Companies Act, 1882, or an Act of Parliament; and a plaint in such a suit can be verified on behalf of the Corporation by one of its principal officers, under s. 435 of the Code of Civil Procedure. A Corporation duly created according to the law of one State may sue and be sued in its corporate name in the Courts of other States. *Campbell v. Jackson* (1853), 1 L. R., 12 Cal., 41, and *Yarvis Beg v. The Board of Foreign Missions of the Presbyterian Church of New York* (1894), 1 L. R., 16 All., 420, distinguished. *SINGER MANUFACTURING COY. v. BAIJ-NATH* (1902) . . . I. L. R., 30 Cal., 103

4. AMENDMENT OF PLAINT.

6.—Civil Procedure Code, s. 53—Suit on a mortgage for sale or "any other relief to which the plaintiff might be entitled"—Subsequent

PLAINT—continued

4. AMENDMENT OF PLAINT—concluded

prayer for money decree, relinquishing claim for sale—The plaintiff, a mortgagee, came into Court asking for a decree for a sale on his mortgage, or "any other relief to which the plaintiff might be entitled." The mortgage sued upon contained the usual covenant for payment, in addition to the further covenant that in default of payment proceedings might be taken against the mortgaged property.

of the pleadings did not amount to a conversion of the suit into a suit of another and inconsistent character. *SUKHDEO PRASAD v. LACHMAN SINGH* (1902) . I. L. R., 24 All, 458

7.—*Mistake—Limitation—Power of Receiver to sue—Limitation Act (XV of 1877), s. 19—Acknowledgment of liability*—By an order of the Court, the plaintiff was appointed Receiver in a certain suit, with authority to sue for and recover an attached debt. Through some mistake in the office of the attorneys of the plaintiff in that suit, the money sought to be attached was wrongly described in the Tabular Statement as money due under the agreement of the 28th October, 1895, whereas it should have been the agreement of the 26th August 1895; and the Court, acting on this representation, made the order, which applied to the alleged agreement of the 28th October, 1895. On application to amend the order and the plaint, or in the alternative to read the existing order as if it were in reality applicable to the right agreement: *Held* that no order for amending the plaint or the order could be made, the amendment of the order would operate only as a new order, taking effect from the date on which it is made, and could not therefore operate as the basis or authority for the present suit. The plaintiff's authority to maintain this suit depends solely upon the order appointing him Receiver. If it has been made under any mistake, it cannot by any course of construction be regarded as applying to anything other than the subject-matter specified by the order itself, the intention of the parties being immaterial. *Way v. Hearn* (1862), 13 C. B. (N.S.), 292, 304, distinguished. In order to satisfy the requirements of s. 19 of the Limitation Act, though a promise to pay need not be made out, it is necessary when the right claimed is a debt that an unequivocal and unqualified admission of the debt or a part of it, or of the subsisting relationship of

can be allowed to take advantage of any ground of exemption from the ordinary law of limitation which has not been pleaded in the plaint. *BESOND BEHARI MOOKERJEE v. RAJ NARAIN MITTHER* (1903) [I. L. R., 30 Calc., 699; a.c., 7 C. W. N., 651]

PLAINT—continued.

5. REJECTION OF PLAINT.

8.—*Limitation—Civil Procedure Code, s. 54*.—When a Court fixes a time under cl. (a) or (b) of s. 54 of the Code of Civil Procedure, it must be a time within limitation, and s. 54 does not give a

9.—*Civil Procedure Code (Act XIV of 1892), s. 54, cl. (c)—Plaint, when may be rejected*.—Where the plaintiff sued to establish a *mul raiyati* right which by a Government order was not granted, and also sought for the position of a *mustagir* and to set aside the executive orders of the Commissioner and the Deputy Commissioner, and the lower Courts rejected the plaint under s. 54 of the Civil Procedure Code: *Held* that, upon the allegations made in the plaint, the suit ought to have been tried, and the plaint could not be rejected on the ground of the suit being barred by any positive rule of law. *NABAB SINGH v. CHABAN RANA* (1901)

[8 C. W. N., 411]

10.—*Act VII of 1870 (Court-fee Act), ss. 7, cls. 5 and 6 (c), 23—Suit undervalued—Power to extend time for payment of deficiency in Court-fee—Civil Procedure Code, s. 54—Limitation*.—A suit for pre-emption of *samindari* property was filed one day before the expiry of the prescribed period of limitation. The plaint stated the profits of the property to be Rs. 4-0, and should therefore have borne Court-fee stamps to the amount of the proper Court-fee on Rs. 123-12-0; but

the Court found that Rs. 4-0 was the correct amount of profits, disallowing the plaintiff's application to be allowed to reduce the amount of profits stated in

no power to extend the time for bringing up the deficiency in the Court-fee beyond the expiry of the prescribed period of limitation, and the plaint was rightly rejected. *MUHAMMAD AHMAD v. MUHAMMAD SIRAJUDDIN* (1901) . I. L. R., 23 All, 423

6. PROCEDURE.

11.—*Jurisdiction—Allegation in plaint believed to have been falsely made in order to avoid jurisdiction of Small Cause Court—Procedure by Court*.—Where an allegation is made in a plaint, which appears to a Court of first instance to be false and to have been made for the purpose of

PLAINT—continued.

1. GENERAL CONSTRUCTION OF PLEADINGS—concluded.

the declaration is sought to be obtained not only is not the case made in the plaint but is one that is wholly inconsistent with it. *Eshen Chunder Singh v. Shama Churn Bhutto* (1886), 11 M. L. J., 7, referred to. *RAJ JATINDRA NATH CHAUDHURI v. AMRITA LAL BAGCHI* (1900) . 5 C. W. N., 20

2. FORM AND CONTENTS OF PLAINT.

(a) CAUSE OF ACTION.

not proceed as upon a single cause of action *RAM PROSAD v. SACHI DASJI* (1902) . 6 C. W. N., 585

(b) FRAME OF SUITS GENERALLY.

3.—*Limitation Act (XV of 1877), Sch. II, Art. 116*—"Contract in writing, registered," signed by one party thereto—Sufficient disclosure of cause of action—During the course of certain litigation in which B was suing A on a promissory note, a compromise was arrived at under which A undertook to execute a mortgage in favour of B, and, in consideration thereof, B undertook to withdraw an appeal which was pending at the time. The mortgage was executed, and the undertaking to withdraw the appeal was embodied in the mortgage deed, which was registered, but signed only by A. B, in breach of his undertaking, permitted the appeal to proceed, and obtained a decree on 20th November, 1891, which he subsequently executed against A, recovering the value of the promissory note upon which he had originally sued. He also retained the mortgage which had been executed in the compromise. A now sued to recover from B the amount which B had collected under the decree, stating the cause of action as having arisen on the date of that collection, namely, 20th October, 1893, when it was contended that the suit was not maintainable inasmuch as the decree had not been set aside, and that, even if treated as a suit for damages for breach of the undertaking to withdraw the appeal, it was barred, as the date of the breach was the date of the decree (viz., 20th November, 1891), which had been wrongly obtained, and this suit had not been brought within three years from that date, the plaint having been filed on 14th September, 1896. Held that, inasmuch as all necessary allegations were made in the plaint, the contract and its breach being alleged, and as the defendant understood what

PLAINT—continued.

2. FORM AND CONTENTS OF PLAINT—concluded.

(b) FRAME OF SUITS GENERALLY—concluded.

the claim against him was, the plaint sufficiently disclosed a cause of action for damages for the breach of contract. Held, also, that the undertaking in the mortgage was "an agreement in writing, registered", within the meaning of Art. 116 of Sch. II to the Limitation Act, and that consequently the claim was not barred. The fact that the instrument was not signed by B did not take the case out of the operation of that article. *KOTAPPA v. VALLUR ZAMINDAR* (1901) . I. L. R., 25 Mad., 50

3 VERIFICATION AND SIGNATURE

4.—*Verification—Civil Procedure Code (Act XIV of 1882), s. 435*—Verification on behalf of a Corporation—Defective verification of plaint, effect of, on appeal.—Where a petition by the Bank of Bengal was verified by a person described as the Officiating Inspector of Branches, Bank of Bengal, and there was nothing to show that he was not the officer authorised to sue or verify the petition on behalf of the Bank at Calcutta, or that he was not able to depose to the facts of the case, Held that the petition was properly verified under s. 435, Civil Procedure Code. Defective verification, if there is no reason to suppose that anyone is prejudiced thereby, is no ground, at an appellate stage, either for returning the plaint for amendment or for refusing relief on the basis of the alleged defect in the plaint. *Rajit Ram v. Katesar Nath* (1896), I. L. R., 18 All. 896, and *Basdeo v. John Smidt and others* (1890), I. L. R., 22 All. 65, followed. *RAM KOMAL SAHA v. BANK OF BENGALEE OF AKTAR* (1900) . 5 C. W. N., 91

5.—*Foreign Corporation, suit by—Foreign Company not registered under the Indian Companies Act, 1882*—Plaint, verification of, by the Manager of an unregistered Company—*Civil Procedure Code (Act XIV of 1882), ss. 430, 435*—*Indian Companies Act (VI of 1882),*

4. AMENDMENT OF PLAINT.

6.—*Civil Procedure Code, s. 63*—Suit on a mortgage for sale or "any other relief to which the plaintiff might be entitled"—Subsequent

PLAINT—continued.**4. AMENDMENT OF PLAINT—concluded.**

prayer for money decree, relinquishing claim for sale.—The plaintiff, a mortgagee, came into Court asking for a decree for a sale on his mortgage, or "any other relief to which the plaintiff might be entitled." The mortgage sued upon contained the usual covenant for payment, in addition to the further covenant that in default of payment proceedings might be taken against the mortgaged property.

of the pleadings did not amount to a conversion of the suit into a suit of another and inconsistent character. **SUKDEO PRASAD v. LACHMAN SINGH (1902)** . I. L. R., 24 All., 456

7.—Mistake—Limitation—Power of Receiver to sue.—*Limitation Act (XV of 1877), s. 19—Acknowledgment of liability.*—By an order of the Court, the plaintiff was appointed Receiver in a certain suit, with authority to sue for and recover an attached debt. Through some mistake in the office of the attorneys of the plaintiff in that suit, the money sought to be attached was wrongly described in the Tabular Statement as money due under the agreement of the 25th October, 1895, whereas it should have been the agreement of the 26th August 1895; and the Court, acting on this representation, made the order, which applied to the alleged agreement of the 26th October, 1895. On application to amend the order and the plaint, or in the alternative to read the existing order as if it were in reality applicable to the right agreement. *Held* that no order for amending the plaint or the order could be made; the amendment of the order would operate only as a new order, taking effect from the date on which it is made, and could not therefore operate as the basis or authority for the present suit. The plaintiff's authority to maintain this suit depends solely upon the order appointing him Receiver: if it has been made under any mistake, it cannot by any course of construction be regarded as applying

after specified parties being

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or to satisfy station Act,

though a promise to pay need not be made out, it is necessary when the right claimed is a debt that an unequivocal and unqualified admission of the debt or a part of it, or of the subsisting relationship of

can be allowed to take advantage of any ground of exemption from the ordinary law of limitation which has not been pleaded in the plaint. **BEHARI MOOKERJEE v. RAJ NARAIN MITTAR (1903)** [I. L. R., 30 Cal., 689; s.c., 7 C. W. N., 651]

PLAINT—continued.**5. REJECTION OF PLAINT.**

8.—Limitation—Civil Procedure Code, s. 54.—When a Court fixes a time under cl. (a) or (b) of s. 54 of the Code of Civil Procedure, it must be a time within limitation, and s. 54 does not give a

9.—Civil Procedure Code (Act XIV of 1892), s. 54, cl. (c).—*Plaint, when may be rejected.*—Where the plaintiff sued to establish a *mul-rायति* right which by a Government order was not granted, and also sought for the position of a *mustagir* and to set aside the executive orders of the Commissioner and the Deputy Commissioner, and the lower Courts rejected the plaint under s. 54 of the Civil Procedure Code: *Held* that, upon the allegations made

10.—Act VII of 1870 (Court-fee Act), ss. 7, cls. 5 and 6 (c), 29.—*Suit undervalued.*—*Power to extend time for payment of deficiency in Court-fee.*—*Civil Procedure Code, s. 54—Limitation.*—A suit for pre-emption of zamindari property was filed one day before the expiry of the prescribed period of limitation. The plaint stated the profits of the property to be RS-4-0, and should therefore have borne Court-fee stamps to the amount of the proper Court-fee on RS-12-0; but

6. PROCEDURE.

11.—Jurisdiction—Allegation in plaint believed to have been falsely made in order to avoid jurisdiction of Small Cause Court—Procedure by Court.—Where an allegation is made in a plaint, which appears to a Court of first instance to be false and to have been made for the purpose of

PLAINT—concluded.**6. PROCEDURE—concluded.**

avoiding the jurisdiction of the Small Cause Court, the plaintiff may be required to satisfy the Court that the allegation is *bona fide* and not merely colourable in order to change the venue. *APPA RAO v. SORANADRI RAO* (1899)

[I. L. R., 24 Mad., 158]

PLAINTIFF.

See MISPOUNDER I. L. R., 26 Mad., 647

See PARTIES—

ADDING PARTIES TO SUITS—PLAINTIFFS;

SUBSTITUTION OF PARTIES—PLAINTIFFS.

—death of—

See CIVIL PROCEDURE CODE, s. 424.

[I. L. R., 35 All., 187]

See PARTIES—SUBSTITUTION OF PARTIES

—PLAINTIFFS I. L. R., 27 Bom., 163

[I. L. R., 26 Mad., 234]

A declaration affecting the plaintiff in a suit which is dismissed is not legal. *CHHOOT MAMON v. SUTOBHATI KOER* (1901) . . . 5 C. W. N., 446

PLEADER.

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| 1. APPOINTMENT AND APPEARANCE . . . | 531 |
| 2. AUTHORITY OF, TO BIND CLIENT . . . | 532 |
| 3. REMUNERATION . . . | " |
| 4. REMOVAL, SUSPENSION AND DISMISSAL . . . | " |
| 5. PROFESSIONAL CONDUCT . . . | 533 |

—authority of—

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.

[7 C. W. N., 343]

—misconduct of—

See LEGAL PRACTITIONERS ACT (XVIII of 1879), ss. 13 and 14.

[5 C. W. N., 45, 48]

I. L. R., 24 Mad., 17

—suit against representative of deceased—

See LIMITATION ACT, 1877, SCH. II, ART. 120 . . . I. L. R., 25 All., 55

1. APPOINTMENT AND APPEARANCE.

L—*Fakalatnams*, acceptance of, in writing, by pleader not necessary.—*PER RAYBURN, J.*—The appointment of a pleader must be in writing and filed in Court, but his acceptance of the *fakalatnama* need not be in writing. *SHAMA PROSAD GHOSH v. TARI MULLIK* (1901) . . . 5 C. W. N., 816

PLEADER—continued.**2. AUTHORITY OF, TO BIND CLIENT.**

2.—*Powers of Vakil—Abandonment of issue as to impartiality—Practice—Issue as to limitation.*

—A vakil's general powers in the conduct of a suit include the abandonment of an issue which, in his discretion, he thinks it inadvisable to press. *So held*, . . .

so to do. *BOMMADEVARA VENKATA NARASIMHA NAIDU v. BOMMADEVARA BHASHTAKARE NAIIDU* (1902) . . . I. L. R., 29 I. A., 76;

[s.c. I. L. R., 25 Mad., 387; 5 C. W. N., 641]

3.—*Oral admission.*—Where the nullity of one of the parties in a proceeding under a 145, Code of Criminal Procedure, orally denied their claim to the disputed land, though no such denial had been made in their written statements: *Held* that admission by the legal practitioner conducting the case was sufficient in a quasi-civil proceeding of this nature, and the Magistrate was justified in passing an order in favour of the other party; the fact that such admission was not recorded did not invalidate the order. *HABO MOHAN SARDAR v. GORIND SALT* (1902) . . . 7 C. W. N., 351

3. REMUNERATION.

4.—*Legal Practitioners' Act (XVIII of 1879), s. 27, rules of the High Court made under—S. 25—Suit by pleader for fees, where no agreement—Division of fees amongst several pleaders engaged in the case.*—S. 25 of the Legal Practitioners' Act has no application where a pleader sues his client for his fees on account of work done by him as his pleader, although there may not be any agreement between the parties as to the fees that should be paid. Where more than one pleader is employed, the fees allowable under the rules framed by the High Court under s. 27 of the Act are to be equally divided amongst the several pleaders engaged in the case. *SARAT CHANDRA BOY CHOWDHURY v. CHANDU CHARAN MITRA* (1902) . . . 7 C. W. N., 300

5.—*Civil Rules of Practice—Rule 282—Rules of the High Court made under—S. 27 of 1879 of*

subject-matter of the claim does not admit of valuation," within the meaning of Rule 23 of the Rules framed under the Legal Practitioners Act. Such a suit falls within Rule 31, and the fee to be allowed to a *vakil* engaged therein is limited to a sum not exceeding the maximum fee allowable in a suit for the possession of the same property. *ACHUTA BHATTIA v. MASTUNATHAYIA* (1903) . . . [I. L. R., 26 Mad., 654]

4. REMOVAL, SUSPENSION AND DISMISSAL

6.—*Legal Practitioners' Act (XVIII of 1879), ss. 13, 14, 40—Suspension from practice*

PLEADER—continued.**4. REMOVAL, SUSPENSION AND DISMISSAL—concluded.**

without opportunity to defend.—Two charges were, on 30th December, 1899, framed by a District Judge against a pleader, under s. 14 of the Legal Practitioners Act, and it was directed that they should be heard on 24th January, 1900. On the day on which the charges were framed, namely, 30th December,

order suspending the pleader was irregular, and must be set aside. **IN THE MATTER OF A SECOND-GRADE PLEADER (1900)** . . . I. L. R., 24 Mad., 83

7.—Legal Practitioners Act (XVIII of 1879), s. 13—"Other reasonable cause" for suspending a pleader—Writing an anonymous letter to influence

A PLEADER (1902) . . . I. L. R., 28 Mad., 448

Held that the pleader had acted in a grossly improper manner in the discharge of his professional duties. **IN THE MATTER OF PURNA CHANDRA DUTT (1903)** . . . 7 C. W. N., 373

5. PROFESSIONAL CONDUCT.

9.—Disciplinary jurisdiction—Pleader making use in later proceedings against A of information obtained by him in an earlier case in which A was his client.—With regard to its disciplinary jurisdiction over pleaders, the High Court of Bombay will follow the rule laid down by BLACKBURN, J., in the case of *Re Cutts* (1867), 16 L. T. (N. S.), 715, which was as follows: "Those things which an attorney earns from his client, or in consequence of his employ-

PLEADER—concluded.**5. PROFESSIONAL CONDUCT—concluded**

ment by his client, he is forbidden to disclose, and any betrayal of his confidence would be visited by the Court as gross misconduct. But if he learns matters relating to his client under such circum-

regulate their professional behaviour. It serves only to indicate the extreme low-water mark of professional conduct. **DAMODAR VENKATESH v. BHAVANISHANKAR MANOJSHI (v. 2., 1902)**
[I. L. R., 26 Bom., 423]

PLEADERSHIP EXAMINATION.

See BOARD OF EXAMINERS

[I. L. R., 28 Calc., 479]

PLEADINGS.

See HINDU LAW—MAINTENANCE—WIDOW. . . I. L. R., 27 Bom., 485

See PLAINT.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[5 C. W. N., 515]

See VARIANCE BETWEEN PLEADING AND PROOF.

See WRITTEN STATEMENT.

—defamatory statement in—

See DEFAMATION. . . 5 C. W. N., 293

—Limitation—Alternative plea of limitation

POLICE.

—application of Criminal Procedure Code to police in Calcutta—

See CRIMINAL PROCEDURE CODE

[7 C. W. N., 661]

POLICE ACT (XLVIII OF 1860).

—ss. 11, 12—

—License—Eating-house—Commissioner of Police—Discretion to refuse license—Construction—Specific Relief Act (I of 1877), s. 43—The petitioner applied to the Commissioner of Police of

POSSESSION—continued.

—suits for—concluded.

See BENGAL TENANCY ACT—concluded.

ES. 101 to 111A;

[I. L. R., 28 Calc., 28

S. 184 AND SCH. III.

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See CO-SHARER—SUITS BY CO-SHARERS
WITH RESPECT TO THE JOINT PROPERTY.

See HINDU LAW—JOINT FAMILY—SUITS
FOR POSSESSION.

See LANDLORD AND TENANT—TRANSFER
BY TENANT . 6 C. W. N., 919

See LIMITATION ACT, 1877, SCH. II—

ART. 9; . 7 C. W. N., 218

ART. 14;

[I. L. R., 29 Calc., 367

ART. 47;

[I. L. R., 25 Bom., 82

ART. 91; . 6 C. W. N., 863

ARTS. 120 AND 144;

[I. L. R., 28 Mad., 113

ARTS. 136 TO 139 AND 144;

[I. L. R., 25 Bom., 275

ART. 139;

[I. L. R., 25 Mad., 452

ART. 141;

[I. L. R., 25 All., 435

ART. 144.

See MAMLATDAR, JURISDICTION OF.

[I. L. R., 26 Bom., 353

See MORTGAGE—CONSTRUCTION.

[I. L. R., 30 I. A., 54

See PARTIES—PARTIES TO SUITS—

MORTGAGES, SUITS CONCERNING;

[7 C. W. N., 11

RECEIVER . 5 C. W. N., 27

See RESISTANCE OR OBSTRUCTION TO
EXECUTION OF DECREE.

[I. L. R., 27 Bom., 302

See RIGHT OF SUIT—POSSESSION, SUIT
FOR.

See SALE IN EXECUTION OF DECREE—
SETTING ASIDE SALE—GENERAL CASES

[I. L. R., 29 Calc., 682

See SPECIFIC RELIEF ACT, s. 2.

See TITLE—MISCELLANEOUS CASES.

[I. L. R., 25 Mad., 448

See VARIANCE BETWEEN PLEADING AND
PROOF—SPECIAL CASE—POSSESSION,
SUIT FOR.

1. EVIDENCE OF POSSESSION.

L—Presumption—Evidence of possession of
certain specific property treated as evidence of

POSSESSION—continued.

1. EVIDENCE OF POSSESSION—concluded.

possession as regards an appendage to such prop-
erty, though no definite acts of possession were
proved as regards the appendage—Limitation.

—Where, on the right to the produce of certain
trees, the right to the produce of the trees was such that the

as to the
indicating

directly their possession of the trees, but that the
trees nevertheless grew out of a wall which

was not a part of the land to which the right related.

2. NATURE OF POSSESSION.

3—Decree of Civil Court—Magistrate, duty of
—Code of Criminal Procedure (Act V of 1899).

decree had already been put in possession of the prop-
erty in dispute. *Dona! Koer v. Rameswari Koeri*
(1899), I. L. R., 26 Calc. 623, referred to. *KUNJA*
BEHARI DAS v. KETRA PAL SING (1801)

[I. L. R., 29 Calc., 209; s. c. 6 C. W. N., 38

3. SUITS FOR POSSESSION.

3.—Effect of previous suit.—Previous suit
on the basis of possession without title, dismissed
of.—Dispossession by plaintiff in the previous
suit.—Previous decree, effect of.—Title, want of, of
plaintiff in subsequent suit.—Defendants brought
a suit in 1896 for a declaration of their title and
to recover possession of the lands in suit against
the plaintiff. The suit was dismissed, defendants
having failed in that suit to prove their title.
Defendants subsequently dispossessed the plaintiff
in 1890, and plaintiff instituted the present suit
in 1896 but could not prove his title. Held that
the effect of the decree in the previous suit was to
declare, as against the present defendants, that
plaintiff's possession was lawful; and, such being the
case, and the defendants being wrong-doers and
having no title, the plaintiff in the present suit, on
the basis of the decree in the previous suit and his
previous lawful possession, is entitled to recover
possession if the lands are the same. *Niss Chand*

POSSESSION—continued.

3. SUITS FOR POSSESSION—continued.

Gaita & ors. v. Kanchiram Bagani (1899), 3 C. W. N. 568; *Gobind Chander Kondoo & ors. v. Tarak Chander Bose & ors.* (1877), I. L. R., 3 Cal. 145; *Ismail Ariff v. Mahomed Ghous* (1893), I. L. R., 20 Cal., 834, distinguished. *FAZLAN RAHMAT CHOWDHRY & RAJ CHUNDER SEN* (1900).

[C. W. N., 234]

4.—*Limitation—Limitation Act (XV of 1877), Sec. II, Art. 116—Breach of contract in writing registered—Lease of villages—Failure by lessee to put lessor in possession—Executory contract to deliver such possession as the nature of the property admits—Mere execution of lease of villages not a delivery of possession—By a registered document, dated 11th November, 1893, defendant leased certain villages to plaintiff for a term of seven years and eight months. On 6th December, 1893, plaintiff applied to be put into pos-*

Both in the case of a sale and of a lease, the registered instrument by which such sale or lease is effected not only operates as a grant, but, in the absence of a contract to the contrary, is also construed and operates as an executory contract to deliver to the vendee or lessee such possession of the property as its nature permits; and the breach of such an obligation is a breach of a contract in writing registered, within the meaning of the article referred to. It was also contended by the defendant that, inasmuch as the *rayats* were in actual occupa-

tion, the defendant was not entitled to the subject-matter of the lease, and the rents were collected by the plaintiff without any further act on the part of the defendant. Held that possession had not been given. *ZAMINDAR OF VIZIANAGRAM & BEHARA SURYANARAYANA PATRULU* (1901).

[I. L. R., 26 Mad., 587]

5.—*Mortgage—Mortgage of non-transferable occupancy holding—Objection of landlord that*

upon the mortgage against the mortgagor, the occupancy *rayat*, the landlords, who objected that the holding was not transferable, were made parties in the mortgage suit. The Court declined to decide this question, and passed a decree for the sale of the property, which, being sold, was purchased by the plaintiff, who, not being able to obtain possession, brought the present suit for recovery of possession. Held that the objection of the landlord defendants that the holding was not transferable could be gone

POSSESSION—concluded.

3. SUITS FOR POSSESSION—concluded.

into in the present suit, and that s. 244, Civil Procedure Code, was no bar to the determination of the question, as it was made by the defendants in the suit. *Bhiram Ali Sheikh v. Gopi Kant Saha* (1897), I. L. R., 24 Cal., 355; and *Nil Kamal Mukerjee v. Jahnabai Choudhuran* (1899), I. L. R., 26 Cal., 246, relied upon. *DURGIA CHARAN AGARWANI & KARAKAT KHAN* (1903).

[7 C. W. N., 807]

6.—*Possession as title—Specific Relief Act (I of 1877) Amendment Act (XII of 1891), s. 9—Possession as title against all but true owner—Effect of Specific Relief Act even where suit is brought more than six months after dispossession.—Possession is, under the Indian, as under the English, law, good title against all but the true*

owner, is entitled to be reinstated, even if the defendant by whom he was dispossessed be the true owner or a person authorized by or claiming under him. But a decree passed in such a suit will not have the force of *res judicata* on the question of title. *Niss Chand Gaita v. Kanchiram Bagani*, I. L. R., 26 Cal., 479, dissented from. *NARAYANA ROW & DHARMACHAR* (1902).

[I. L. R., 26 Mad., 514]

4 EFFECT OF POSSESSION.

7.—*Nature of interest in immovable property acquired by virtue of mere possession.—A person in possession of land without title has an interest in the property which is heritable and good against all the world except the true owner—an interest which, unless and until the true owner interferes, is capable of being disposed of by deed or will, or by execution sale, just in the same way as it could be dealt with if the title were unimpeachable.* *Asher v. Whitlock*

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See NUISANCE—UNDER CRIMINAL PROCEDURE CODE . . . 7 C. W. N., 142

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.

[I. L. R., 25 All., 537

See SECURITY FOR GOOD BEHAVIOUR. [I. L. R., 26 Mad., 471

—attachment of property—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION. [5 C. W. N., 108, 710

—jurisdiction of Civil Court to interfere with—

See MAMLATDAR, JURISDICTION OF. [I. L. R., 26 Bom., 353

—local inquiry—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS [5 C. W. N., 686

—parties to proceedings—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, ETC. [5 C. W. N., 67

See RECEIVER. [I. L. R., 30 Calc., 503

1. CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION.

1.—Dispute as to possession of lands—Code of Criminal Procedure (Act F of 1899).

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

1. CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—*continued.*

es. 145, 146—Joint possession—Attachment of land and crops—Jurisdiction.—Where two rival zamindars claimed to hold certain alluvial lands, and where it was admitted that they were joint-proprietors of mauza G, but the question also in dispute was whether those lands belonged to mauza G or to

action under s. 145, Criminal Procedure Code. *Also*, also, that, there being no dispute between the tenants *inter se*, the order of the Magistrate as to the attachment of the crops on the land, which belonged to the tenant who grew them, was a bad order for want of jurisdiction, and must be set aside. *DEKUMI CHOWDHURI v. MOZAFAR ALI KHAN* (1900) . . . 5 C. W. N., 105

2. —Criminal Procedure Code (Act F of 1899), s. 145—Joint property—Definite piece of land in dispute—Jurisdiction.—Where a dispute related to a definite plot of land, but the question was whether this plot was included in a piece of land which was in the exclusive possession of one of the parties, or in another which was the

undivided share in land, or rent or profit issuing from an undivided share, because in such a case the subject-matter of the dispute is uncertain and its boundaries undefined, and s. 145, Code of Criminal Procedure, only contemplates disputes as to the possession of definite pieces of land or the rents and profits issuing from definite pieces of land. *Tariyan Bibee v. Asamuddin Bepari* (1901), 4 C. W. N., 426; *Krista Alhadani Dasi v. Radha Syam Panday* (1902), 7 C. W. N., 111; *Sard Sarain Singh v. Biry Mohan Thakur* (1895), I. L. R., 23 Calc., 50, explained. *Quare*—whether an order by a Magis-

MOHAN GHOSH v. RAJENDRA C. GHOSH (1903) [7 C. W. N., 463

3. —Criminal Procedure Code (Act F of 1899), s. 145—Dispute as to possession of land—Civil suit brought by one party to recover possession from the other how it affects Magistrate's jurisdiction—Duty of Magistrate to ascertain land in dispute—Order passed in respect of lands in excess of those referred to in the proceedings, if proper.—Under s. 145, Code of Criminal Procedure

POSSESSION, ORDER OF CRIMINAL COURT AS TO—continued.

1 CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—continued.

a Magistrate has power to intervene and pass a temporary order in regard to the possession of the land in dispute, only until one or other of the parties applies for or obtains a determination of his rights in a Civil Court. Where one of the parties, by bringing a civil suit for recovery of possession, has admitted

Procedure, if result conduces to maintaining peace, should be taken to preserve the peace, it is open to him to take proceedings under provisions of law other than s. 145, Code of Criminal Procedure. He has no jurisdiction to proceed under s. 145, Code of Criminal Procedure. When, in a proceeding under s. 145, Code of Criminal Procedure, a question is raised as to the identity of the land in dispute, the Magistrate is bound, before going further, to ascertain and identify the lands, so that neither party may be in doubt as to the specific lands in respect of which proceedings are taken. A Magistrate has no jurisdiction to decide a dispute as to the lands in excess of those referred to in his proceedings. *AKHISENWAR DEBI v. DAMPA NABAIN DAS* (1903) 7 C. W. N., 558

4.—Evidence of possession—*Criminal Procedure Code (Act V of 1898), s. 145—Order passed ex parte—Evidence, necessity of taking.*—A Magistrate can proceed *ex parte* in a proceeding under s. 145, Code of Criminal Procedure. But it is not competent for him to pass an order in favour of the party present without some evidence that such party is in possession. *RAM KRISHNA PATRA v. AGAORE NASKAR* (1902). 6 C. W. N., 825

5.—“Subject-matter of dispute”—*Criminal Procedure Code (Act V of 1898), ss. 145, 146—“Subject-matter of dispute,” meaning of; whether it refers to whole subject-matter or to component parts—Magistrate, jurisdiction of, to make an order under s. 145 in regard to some, and an order under s. 146 in regard to the remaining, parts—Separate and distinct subject-matter—*

refers to the whole or to any component part or parts thereof. If that component part is distinct and

dispute is indivisible and must be dealt with as a whole, it must be dealt with in such a way as to make, in regard to it, one order under either s. 145 or s. 146 of the Code, as the circumstances may require. *Kalca Jheriah Coal Company v. Sib Krishna Das & Co* (1894), 1 L. R., 24 Cal., 297,

POSSESSION, ORDER OF CRIMINAL COURT AS TO—continued.

1 CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—concluded.

explained and distinguished. *Rakhal Dass Singh and another v. Sheo Pershad Singh* (1875), 24 W. R., Cr., 73, referred to. *Per TAYLOR, J.*—In this case each separate plot may be regarded as a

2 LIKELIHOOD OF BREACH OF THE PEACE.

6.—Dispute as to possession—*Criminal Procedure Code (Act V of 1898), ss. 107, 145—Dispute as to land—Security to keep the peace, order for—Procedure.*—Where a dispute, which is likely to cause a breach of the peace, relates to the possession of land, the Magistrate should proceed under s. 145, Code of Criminal Procedure, and not under s. 107. Where, in such a case, proceedings were drawn up under s. 107, Code of Criminal Procedure, and only one of the parties was bound down to keep the peace, the order was set aside as bad. *Dote Gobind Chowdry v. Dhanu Khan* (1897), 1 L. R., 25 Cal., 55v, followed. *BIDHU BHUSAN CHATTERJI v. ANNODA CHURN KANANGUI* (1902). 6 C. W. N., 883

7.—*Criminal Procedure Code (Act V of 1899), ss. 107, 145, 146—Possession of immovable property, dispute as to—Order requiring security for keeping the peace, if proper—Procedure—When the apprehension of a breach of the peace is found to be contingent upon an*

8.—Grounds for action of Magistrate—*Immovable property, dispute as to—Order of*

ings under s. 145 of the Code of Criminal Procedure should set out the grounds on which he is

POSSESSION, ORDER OF CRIMINAL COURT AS TO—continued.

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[I. L. R., 29 Calc., 724]

See LIMITATION ACT, 1877, SCH. II, ART. 174 . . . I. L. R., 28 Calc., 86

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE . . . 7 C. W. N., 142

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.

[I. L. R., 25 All., 537]

See SECURITY FOR GOOD BEHAVIOUR. [I. L. R., 26 Mad., 471]

—attachment of property—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION.

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—jurisdiction of Civil Court to interfere with—

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See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS

[5 C. W. N., 686]

—parties to proceedings—

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[5 C. W. N., 67]

See RECEIVER.

[I. L. R., 30 Calc., 593]

1. CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION.

1.—Dispute as to possession of lands—Code of Criminal Procedure (Act V of 1898).

POSSESSION, ORDER OF CRIMINAL COURT AS TO—continued.

1. CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—continued.

ss. 145, 146—Joint possession—Attachment of land and crops—Jurisdiction.—Where two rival zamindars claimed to hold certain alluvial lands, and where it was admitted that they were joint-proprietors of mauza G, but the question also in dispute was whether those lands belonged to mauza G or to mauza N, one of the parties claiming that if they belonged to N he had absolute right in it, and the Magistrate, in a proceeding under s. 145, Criminal Procedure Code, passed an order under s. 146, Criminal Procedure Code, attaching the lands to mauza N.

order for want of jurisdiction, and must be set aside. DENOMONI CHOWDERANI v. MOZAFAR ALI KHAN (1900) . . . 5 C. W. N., 105

2. Criminal Procedure Code (Act V of 1898), s. 145—Joint property—Definite piece of land in dispute—Jurisdiction.—Where a dispute related to a definite plot of land, but the question was whether this plot was included in a piece of land which was in the exclusive possession of one of the parties, or in another which was the joint property of both the parties in dispute. Held that the Magistrate had jurisdiction to proceed under s. 145, Code of Criminal Procedure. A Magistrate cannot proceed under s. 145, Code of Criminal Procedure, where the disputed property is itself an undivided share in land, or rent or profit issuing from an undivided share, because in such a case the subject-matter of the dispute is uncertain and its boundaries undefined, and s. 145, Code of Criminal Procedure, only contemplates disputes as to the possession of definite pieces of land or the rents and profits issuing from such land.

3. Criminal Procedure Code (Act V of 1898), s. 145—Dispute as to possession of land—Civil suit brought by one party to recover possession from the other how it affects Magistrate's jurisdiction—Duty of Magistrate to ascertain land in dispute—Order passed in respect of lands in excess of those referred to in the proceedings, if proper.—Under s. 145, Code of Criminal Procedure

POSSESSION, ORDER OF CRIMINAL COURT AS TO—continued.

1. CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—continued.

a Magistrate has power to intervene and pass a temporary order in a civil suit for recovery of possession, has admitted that the other party are in possession, there is no

Magistrate is bound, before going further, to ascertain and identify the lands, so that neither party may be in doubt as to the specific lands in respect of which proceedings are taken. A Magistrate

4.—Evidence of possession—Criminal Procedure Code (Act V of 1898), s. 145—Order passed ex parte—Evidence, necessity of taking.—A Magistrate can proceed ex parte in a proceeding under s. 145, Code of Criminal Procedure. But it is not competent for him to pass an order in favour of the party present, without some evidence that such party is in possession. *RAM KRISHNA PATRA v. AGHORE NASKAR* (1902). 8 C. W. N., 925

5.—“Subject-matter of dispute”—Criminal Procedure Code (Act V of 1898), ss. 145, 146—“Subject-matter of dispute,” meaning of, whether it refers to whole subject-matter or to component parts—Magistrate, jurisdiction of, to make an order under s. 145 in regard to some, and an order under s. 146 in regard to the remaining, plots—Separate and distinct subject-matter—Divisibility of subject-matter—One proceeding in regard to several plots—Irregularity—Prejudice.—The expression “subject-matter of dispute,” used in ss. 145 and 146 of the Code of Criminal Procedure, refers to the whole or to any component part or parts thereof. If that component part is distinct and

requires. *Katra's Jharia Coal Company v. Shri Krishna Das & Co* (1891), I. L. R., 23 Calcutta 297,

POSSESSION, ORDER OF CRIMINAL COURT AS TO—continued.

1. CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—continued.

explained and distinguished. *Rakkhal Dass Singh and another v. Sheo Pershad Singh* (1875), 24 W. R., Cr., 73, referred to. *Per TAYLOR, J.*—In this case each separate plot may be regarded as a separate subject-matter of dispute, and in that case,

der Chowdhary v. Ambika Churn Jayumdar (1901), 5 C. W. N., 544, relied upon. *BADAR ALI v. ABDUL KARIM* (1901) 5 C. W. N., 710

2. LIKELIHOOD OF BREACH OF THE PEACE.

6.—Dispute as to possession—Criminal Procedure Code (Act V of 1898), ss. 107, 145—Dispute as to land—Security to keep the peace, order for—Procedure.—Where a dispute, which is

were drawn up under s. 107, Code of Criminal Procedure, and only one of the parties was bound down to keep the peace, the order was set aside as bad. *Dole Gobind Chowdry v. Dhanu Khan* (1897), I. L. R., 25 Calcutta, 559, followed. *HIDHU BRUNAN CHATTERJI v. ANKODA CHURN KANANOTI* (1902) 8 C. W. N., 883

7.—Criminal Procedure Code (Act V of 1898), ss. 107, 145, 146—Possession of immovable property, dispute as to—Order requiring security for keeping the peace, if proper—Procedure—When the apprehension of a breach of the peace is found to be contingent upon an attempt by either of the parties in dispute to exercise of land, the 5, 146, Code under s. 107.

8.—Grounds for action of Magistrate—Immovable property, dispute as to—Order of Magistrate, contents of—Breach of the peace—Opportunity to produce evidence—Sessions Judge, power of revision or reference—High Court, powers of—Code of Criminal Procedure (Act V of 1898), ss. 145 and 146—Charter Act (21 & 25 Vict., c. 104), s. 15—Proceedings under Chapter XII of the Code of Criminal Procedure are not proceedings with regard to which a Sessions Judge has any power of revision or reference, nor has he the power to call for the records in such proceedings. The High Court only can interfere, under the power of sup. Act. ings t Proceed

POSSESSION, ORDER OF CRIMINAL COURT AS TO—continued.

2. LIKELIHOOD OF BREACH OF THE PEACE—concluded

s. 145—Possession of immovable property, dispute as to—Irregularity of proceedings.—When proceedings taken under s. 145 on a police report, which was defective in not showing the boundaries of the lands in dispute, were dropped, and fresh proceedings were instituted on a later report which did not state that there was any apprehension of a breach of the peace, and the Magistrate in his judgment referred to both reports: Held that only the latter report,

3 PARTIES TO PROCEEDINGS.

15.—Addition of parties—Criminal Procedure Code (Act V of 1898), s. 145—Dispute as to possession of land—Parties, adding of—Previous proceeding—New proceeding with new

mentioned in the first paragraph of s. 145 of the Code, is in actual possession. A Magistrate is entitled to allow a third party to come in in the course of the proceeding only for the purpose of showing that no dispute likely to cause a breach of the peace

proceeding. A recording the under the first course of the investigation, any new party as concerned in the dispute. *Protab Narayan Singh v. Rajendro*

should be declared to be in possession on the date of the subsequent proceeding. *BEH L. SINGH v. UMRAO MAHTO* (1900) 5 C. W. N., 900

16.—Jurisdiction—"Parties concerned in such dispute," meaning of—Addition of parties during proceedings, effect of—Fresh proceedings, if necessary—Omission to add necessary parties—Dispute as to separate plots of land—Separate proceedings, if necessary—Criminal Procedure Code (Act V of 1898), s. 145—Proceedings under s. 145 of the Criminal Procedure Code are not without jurisdiction because

POSSESSION, ORDER OF CRIMINAL COURT AS TO—continued.

3. PARTIES TO PROCEEDINGS—continued.

the Magistrate on information before him has made parties thereto only those actually in dispute and

claiming possession in some way of the lands or a portion of the lands in dispute has not been made a party, he not being one of the parties in the dispute likely to cause a breach of the peace, so far as appeared to the Magistrate; such

17.—Manager—Criminal Procedure Code (Act V of 1898), s. 135—Order in favour of the manager of the proprietors of an indigo concern—Jurisdiction—An order under s. 145 of the Criminal Procedure Code was passed in favour of the manager, who was an employee of the proprietors of an indigo concern. Held that the order was without jurisdiction. *JHABU SINGH v. RUTHERFORD* (1902)

[7 C. W. N., 208]

18.—Manager or agent—Criminal Procedure Code (Act V of 1898), s. 145—Dispute as to possession of land—Manager or agent, if order can be made in favour of—Possession—Actual possession—Possession as proprietor—There is jurisdiction in the Court under s. 145, Code of Criminal Procedure, to make an order in favour of a person who claims to be in possession of the disputed land as agent to, or manager for, the proprietors, when the actual proprietors are not residents within the appellate jurisdiction of the High Court. *Jhabu Singh v. Rutherford* (1902), 7 C. W. N., 208, overruled. *DEODHAI SINGH v. FOLLET* (1903)

[7 C. W. N., 825]

19.—Necessary parties—Criminal Procedure Code (Act V of 1898), s. 145—Object of

POSSESSION, ORDER OF CRIMINAL COURT AS TO—continued.

3. PARTIES TO PROCEEDINGS—continued.

the section—Magistrate, duty of, to ascertain necessary parties—Necessary parties, omission of, to bring in, whether vitiates proceeding—Jurisdiction of Magistrate—Names of parties disclosed in written statements and police-report—Persons interested in, or interested in claiming, possession of land, and person alleged to be in de facto possession of portion of land, whether necessary parties—The principal object which a proceeding under s. 145, Criminal Procedure Code, aims at is the prevention of a breach of the peace, and such object cannot be achieved if persons who are interested in, or at any rate interested in claiming, possession of the land in dispute, and persons who are alleged to be in de facto possession of a por-

POSSESSION, ORDER OF CRIMINAL COURT AS TO—continued.

3. PARTIES TO PROCEEDINGS—concluded.

interest in the property in dispute, is not warranted by law, and is bad for want of jurisdiction. **RAMESWAR PERSAD NARAIN SINGH v. HARBAH SINGH (1901)** 6 C. W. N., 104

4 NOTICE TO PARTIES.

22.—Criminal Procedure Code (Act V of 1898), s. 145—Possession, dispute relating to—Notice to party of place of trial to be given in sufficient time to enable him to produce evidence—Magistrate moving about from place to place.—In a proceeding under s. 145, Code of Criminal Procedure, the second party failed to ascertain where the Magistrate, who had been moving about from place to place, was holding his camp, and so failed to procure the attendance of his witnesses at the trial: Held that an order passed by the Magistrate, directing the first party to continue in possession, was bad, inasmuch as the second party had no notice of the place of trial in sufficient time to procure the attendance of his witnesses. **KALI NATH MISHRA v. ARBOY BEPARI (1903)**

[7 C. W. N., 705]

5. EVIDENCE, MODE OF TAKING, ETC.

23.—Criminal Procedure Code (Act V of 1898), s. 145, 537—Proceeding in respect of several plots of lands—Separate proceedings, if necessary—Prejudice.—Where a Magistrate drew up one proceeding in respect of several plots of land claimed to be in the possession of different persons, and the parties were not prejudiced by the Magistrate not taking separate proceedings but dealing with the matter in one and the same proceeding; and where the course taken by the Magistrate did not preclude any of the parties from adducing evidence in the case concerning the different plots of land: Held that the procedure taken by the Magistrate did not vitiate the inquiry or the order made therein. **ISWAR CHUNDRAN CHOWDHRY v. AMRITA CHURN MAJUMDAR (1901)**

[6 C. W. N., 544]

24.—Criminal Procedure Code (Act V of 1898), s. 145—Case given up by one side—Oral admission by mooktear, if sufficient—Recording of the same, if indispensable.—Although it is ordinarily necessary to record evidence in a case under s. 145, Code of Criminal Procedure, before passing final orders, it is not indispensable to do so when the case is completely given up by one side. Where the mooktear of one of the parties in a proceeding under s. 145, Code of Criminal Procedure, orally denied their claim to the disputed land, though no such denial had been made in their written statements: Held that admission by the legal practitioner conducting the case was sufficient in a quasi-judicial proceeding of this nature, and the Magistrate was justified in passing an order in favour of the other party.

20.—Criminal Procedure Code (Act V of 1898), s. 145—Claims made by two sets of tenants—Parties, necessary—Landlords, if necessary parties—Omission to make them parties, if it vitiates proceedings—Separate plots of lands—Separate proceedings if absolutely necessary—Jurisdiction.—Where, in a proceeding under s. 145, Criminal Procedure Code, two sets of tenants who claimed possession of the disputed lands were made parties and their landlords were not, though the latter were persons interested in the dispute, still, when they had never moved in the matter themselves, an objection as to want of necessary parties, made by the tenants, was considered not *bona fide*, and was not entertained. Although it may be desirable, in proceedings under s. 145, Criminal Procedure Code, to deal with each separate dispute separately, it is impossible to apply to such proceedings the strict rule of procedure which has to be observed in civil actions. **Kishan Singh v. Uma Singh (1897), *J. L. R.*, 15 Cal., 31; **Abhoyesari Debi v. Shuddhesari Debi****

21.—Persons disclaiming interest—Criminal Procedure Code (Act V of 1898), s. 145—Order in favour of persons, some of whom disclaim all interest in subject-matter of dispute, if legal—Jurisdiction.—An order under s. 145 of the Criminal Procedure Code, made in favour of four persons, two of whom claim no

POSSESSION, ORDER OF CRIMINAL COURT AS TO—continued.

5. EVIDENCE, MODE OF TAKING, ETC.—concluded.

the fact that such admission was not recorded did not invalidate the order. HARO MOHAN SARDAR v. GOBIND BHAI (1902) . . . 7 C. W. N., 351

6. DECISION OF MAGISTRATE AS TO POSSESSION.

25.—Arbitration—Criminal Procedure Code (Act V of 1898), s. 145—Possession, dispute as to—Arbitration, reference to—Magistrate's jurisdiction.—The parties to a proceeding under s. 145, Code of Criminal Procedure, asked to refer their dispute to an arbitrator, who was to decide which of them was in possession. The Magistrate consented, and, pending the decision of the arbitrator, attached the properties in dispute, under s. 146, Code of Criminal Procedure. On an award being made by the arbitrator, deciding the question of actual possession: Held that the Magistrate ought to take the finding of the arbitrator as to possession in bringing in the order. *TANAMONI CHAUDHURI v. W. N., 461*

26.—Attendance of parties—Code of Criminal Procedure (Act V of 1898), ss 145, 438—Summary finding of possession by Magistrate in proceeding under s. 145—Written statement in such proceeding, proof of—Warrant, issue of, for attendance of parties, legality of—Sessions Judge, power of, on application for redress of irregularity under s. 145, to report to High Court.

pass an order declaring possession with the party who has filed a written statement, without taking evidence in proof of such statement. He has no jurisdiction to issue a warrant to compel the attendance of a party in such proceeding. On application to the Sessions Judge for redress against such illegality, he should report the matter, under s. 438 of the Code, for orders of the High Court, if he is of opinion that the order is illegal and without jurisdiction. *KEYATULLAH v. FERUZUDDIN MIAN* (1900) . . . 5 C. W. N., 71

27.—Claim of undivided share—Criminal Procedure Code (Act V of 1898), s. 146—Decree of Civil Court—Jurisdiction. The 1st party obtained a decree against the mother of the 2nd party, in a suit in which the 2nd party were also defendants; the 1st party purchased the property at the sale held in execution of the decree, and obtained possession thereof through the Civil Court. The 2nd party not being the debtors, the sale certificate, which originally contained their names, was subsequently amended by those names being struck off. The Magistrate found that the 2nd party now claimed an undivided share, and

POSSESSION, ORDER OF CRIMINAL COURT AS TO—continued.

6. DECISION OF MAGISTRATE AS TO POSSESSION—continued.

passed an order under s. 146, Code of Criminal Procedure. Held that, if the claim of the 2nd party was to an undivided share, the order of the Magistrate was wrong, inasmuch as s. 146 contemplates a dispute between two parties, each of whom asserts the right to hold actual possession of the property as against the other, and not a dispute between parties claiming to hold joint possession.

The 1st party was estopped by the Civil Court. *S. Gordon Sams v. Joharry Lal* (1902) . . . 5 C. W. N., 563, followed. *KRISTA ALHADDIS v. RADHA SYAM PANDAY* (1902) . . . 7 C. W. N., 226

29.—Joint family—Criminal Procedure Code (Act V of 1898), ss 145, 146—Dispute against member of joint family—Possession granted of whole property to auction-purchaser—Dispute as to possession between other members of the joint family and the auction-purchaser—Jurisdiction of Magistrate to adjudicate upon rights of parties—Possession by Civil Court, effect of—Where, in execution of a decree against a member of a joint Mitakshara family, possession of the whole property was given to an auction-purchaser thereof: Held that, in a proceeding under s. 145, Criminal Procedure Code, between the other members of the joint family and the auction-purchaser, it is not open to the Court to adjudicate upon the rights of the parties and to decide that the auction-purchaser was entitled to possession of only the share of the judgment-debtor. For the purposes of that section, it is sufficient to find that the whole property was sold.

BITHUL GAYAWAL v. JUG LAL SINGH (1902) . . . 6 C. W. N., 841

29.—Specification of land—Criminal Procedure Code (Act V of 1898), s. 145—Dispute as to land—Specification of land, if and when necessary—Civil Court decree for possession—Decree, effect of—Magistrate, duty of—Procedure.—Although, in a proceeding under s. 145, Criminal Procedure Code, the disputed land should be thoroughly ascertained by both parties, yet, where the parties were not at issue upon the question as to what the disputed lands were, and neither the Court nor anybody concerned in the dispute was under any misapprehension as to that point, there is no ground for holding that the Magistrate who tried the case had no jurisdiction to make an order under the section for want of proper specification of the lands in dispute. The duty of a Criminal Court

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

6. DECISION OF MAGISTRATE AS TO POSSESSION—*concluded.*

in a case under s. 145, Criminal Procedure Code, where there is a decree of a Civil Court for possession in respect of the disputed land, is to find which party held such Civil Court decree, and then to maintain that party in possession; it is not necessary that such decree should be a decree for possession as between the parties to the proceeding under s. 145, Criminal Procedure Code. *Davlat Koer v. Ram-essuri Koer (1593), I. L. R., 26 Calc., 625*, followed. *GORDON SIMS v. JOHNNY LAL (1901)*. 5 C. W. N., 583

30.—Transfer of case—*Criminal Procedure Code (Act V of 1898), ss. 145 and 526—Criminal case—Bias of Judge—Magistrate's powers under s. 145—Breach of peace—Right of the parties.*—*The magistrates—*

“criminal case”, within the meaning of s. 526 of the Code. A criminal case means a case arising out of, and dealing with, some crime already committed. It does not include proceedings taken for the prevention of crime. Under s. 145 of the Code, a Magistrate is not at liberty to go into the merits of the claims, of any of the parties to the dispute, to a right to possess the subject thereof. He can decide only the fact of possession at the date of the order requiring the parties to put in their statements. The parties cannot be called upon to furnish a statement of their rights, nor can the Magistrate take, as the basis of any action he may finally decide upon, any conclusion at which he may arrive, or at which he may have arrived, as to the respective titles of the parties. *IN RE PANDURANG GOVIND PUJARI (1900)*

[I. L. R., 25 Bom., 179]

7. ATTACHMENT OF PROPERTY.

31.—Crops—*Jurisdiction—Attachment of “crops” cut and stored—“Crops or other produce of land,” meaning of—Criminal Procedure Code (Act V of 1898), ss. 145 and 146.*—The words “crops or other produce of land”, in sub-s. (2) of s. 145 of the Criminal Procedure Code, mean crops or other produce of land attached to the land. A Magistrate therefore has no jurisdiction, under s. 146 of the Code, to attach crops which have been severed from the land and stored. *RAMZAN ALI v. JAYADHAR SINGH (1902)*

[I. L. R., 30 Calc., 110; a.c., 6 C. W. N., 881]

32.—*Criminal Procedure Code (Act V of 1898), s. 145—Suit in Civil Court, dismissed—Finding as to title—Order of Magistrate giving possession—Jurisdiction—Jurisdiction of High Court.*—In a proceeding under s. 145, Code of Criminal Procedure, crops growing on the land in dispute were cut by the Magistrate's order, sold, and the

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

7. ATTACHMENT OF PROPERTY—*concluded.*

money deposited in Court. One of the parties then

“...the case was no cause of action against the defendant. Upon this finding, the Magistrate ordered the deposit to be made over to the plaintiff. Held that, as in passing this order the Magistrate was not exercising any judicial power, no question of his jurisdiction arose, and the High Court could not interfere. *ANNADA PRASAD PAL v. KHODA BOH MALLIK (1902)*

[6 C. W. N., 883]

8. TRANSFER OR WITHDRAWAL OF PROCEEDINGS.

33.—Transfer—*Criminal Procedure Code (Act V of 1898), ss. 145, 192, sub-s. (2), 528, 529 (f), 530 (j)—Transfer of case under s. 145 by District Magistrate to another Magistrate, to try it himself or make it over to another—Valid or invalid transfer—Jurisdiction, local—Prejudice—Local inquiry by trying Magistrate.*—In a proceeding under s. 145, Criminal Procedure Code, the second party moved the District Magistrate for the transfer of

patent to try the case, provided that he was vested with the powers of a proper class; and that the order made by him would not, on that account, be bad. S. 530 (j) refers to a case where a Magistrate is not competent, by virtue of the position he holds or powers vested in him, to try a case of the character referred to in s. 145, Criminal Procedure Code. s. 148, Criminal Procedure Code, does not necessarily imply that the Magistrate, before whom the case is, may not himself hold the local inquiry provided for in the section. Any mistake made erroneously and in good faith by one Magistrate in transferring a case under s. 145, Criminal Procedure Code, to another, under s. 192, is cured by the provisions of s. 529 (f). *RAJ MOHAN BOH CHOWDHURY v. PROSVEN CHANDRA CHATTERJI (1901)*

[5 C. W. N., 686]

9. STRIKING OFF PROCEEDINGS.

34.—*Recording of order under s. 145. Criminal Procedure Code—Retival of proceedings—Fresh materials, if to be recorded—Where proceedings taken under s. 145, Code of Criminal Procedure, have been struck off, and it is intended*

POSSESSION, ORDER OF CRIMINAL COURT AS TO—continued.

9. STRIKING OFF PROCEEDINGS—continued.

In take fresh proceedings upon new materials, it is necessary for the Magistrate to record such new materials in his order renewing the proceedings. *Tarini Churn Choudhry v Amulya Balan Roy* (1893), 1 L. R., 20 Cal., 867, followed. Where

[10 C. W. N., 620]

10 DISPUTES AS TO RIGHT OF WAY, WATER, ETC.

35.—Jalkar—Criminal Procedure Code (Act V

[8 C. W. N., 181]

36.—Right of way—Code of Criminal Procedure (Act V of 1898), s. 147—Easement, right

[10 C. W. N., 620]

37.—Water—Code of Criminal Procedure (Act V of 1898), s. 147—Construction and meaning of the section—Comparison of the language used in s. 147 of Act V of 1898, s. 147 of Act X of 1852 and s. 532 of Act X of 1872—Previous law bearing on the subject—Meaning of the term "each thing

POSSESSION, ORDER OF CRIMINAL COURT AS TO—continued.

10 DISPUTES AS TO RIGHT OF WAY, WATER, ETC.—continued.

Criminal Procedure Code, legality of.—Where it was found that the first party had a right to the flow of water for purposes of irrigation from a certain channel passing through the village of the second

first party have proved an uninterrupted user of water of the channel for twenty years, which they

the proviso to s. 147, Criminal Procedure Code. *PASUPATI NATH BOSE v NANDO LAL BOSE* (1900) [5 C. W. N., 87]

11. DISPOSSESSION BY CRIMINAL FORCE.

by a summary order, to restore the state of things

case of eviction under an order under s. 522, must seek his remedy in the Civil Court. *Achayan Gosind v. Feroze* (1899), 1 L. R., 23 Bom., 493, referred to and explained. *RAMESWAR MARWARI v. BISWA NATH BADERJEE* (1900) 8 C. W. N., 374

38.—Code of Criminal Procedure (Act V of 1898), s. 522—Order for restoration of possession of immovable property—Conviction of accused on charge of criminal trespass—No finding of use of criminal force—Legality of order for restoration.—Certain persons

POSSESSION, ORDER OF CRIMINAL COURT AS TO—concluded

11. DISPOSSESSION BY CRIMINAL FORCE—concluded.

the accused to restore possession of the land. On a

jurisdiction. *BATAKALA POTTIYADU* (1902)

[I. L. R., 28 Mad., 49]

40. ———— *Criminal Procedure Code*, s. 522—*Act XLV of 1860 (Indian Penal Code)*, s. 350—*Restoration of possession of immovable property—Use of criminal force.*—To support an order under s. 522 of the Code of Criminal Procedure, restoring possession of immovable property, it is necessary for the Court to find as a fact, not only that the person in whose favour such order is made was deprived of possession by an offence, but that such offence was attended by the use of criminal force. *Ram Chandra Boral v Jityandria* (1897), I. L. R., 25 Cal., 434, and *Ishan Chandra Kalla v. Dina Nath Badhak* (1899), I. L. R., 27 Cal., 174, followed. *CHURAMAN v. RAM LAL* (1903)

[I. L. R., 25 All., 341]

12 COSTS.

41.—*Jurisdiction—Costs—Order for assets.*

has no jurisdiction to pass an order, under s. 140 of the Code of Criminal Procedure, making a party liable for a certain sum as costs, without notice to him so that he may have an opportunity of contesting the same. *PROKASH CHUNDER SARKAR v. RAM PRASAD PATTAK* (1900)

[I. L. R., 28 Cal., 303;

s.c., 5 C. W. N., 291]

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See EVIDENCE—CRIMINAL CASES—MEDICAL EVIDENCE . . . 6 C. W. N., 88

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[I. L. R., 24 All., 85]

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[I. L. R., 28 Cal., 720]

See TENDER.

POWER OF APPOINTMENT.

See COURT-FREE ACT, SEC. I, ART. 11.

[I. L. R., 35 Mad., 515]

POWER OF ATTORNEY.

See PARDANASHIN WOMEN—EXECUTION OF DOCUMENT BY. I. L. R., 29 Cal., 744

POWER OF SALE.

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PRACTICE.

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[8 C. W. N., 593]

1 CIVIL CASES.

1.—**Appeal—Decree awarding costs as against two defendants—Payment by one defendant—Appeal by both defendants jointly to High Court against decree—Death of defendant who paid during pendency of appeal—Prosecution of appeal on behalf of survivor alone—Reversal of decree by High Court—Claim by legal representative of deceased defendant for restitution of amount paid as costs.**—A decree was obtained in a District Court against two defendants, by which they were ordered to deliver up certain property and to pay the costs of the suit. These costs were in fact

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t was

not brought on the record, and when the appeal came on for hearing it was proceeded with by the second

that the District Court . . .
the surviving defendant alone. The son and legal representative of the first defendant now presented a petition in execution, and claimed that the whole decree of the District Court had been reversed and

PRACTICE—continued.**1. CIVIL CASES—continued.**

entitled to restitution of the costs levied from his father under that decree until he had successfully prosecuted the appeal of his father which was still pending. **NATESA AYTAR v. ANNABANI AYTAR (1901)** . I. L. R., 25 Mad., 426

2.—**Commission—Examination of witness on commission—Prolonged and unnecessary cross-examination.**—Where the Court is satisfied that the cross-examination of any witness on commission is being unnecessarily prolonged, it will order such cross-examination to be concluded within a certain time. **SURESH PRASAD v. STANDARD LIFE INSURANCE COMPANY (1903)** . I. L. R., 30 Calc., 625

3.—**Civil Procedure Code (Act XIV of 1902), ss. 887, 899—Oaths Act (X of 1873), s. 13—Evidence, taken by commission, of**

s.c., I. L. R., 30 Calc., 934

4.—**Counsel—Insolvent Debtors Act (11 & 12 Vic., c. 21), s. 36 Right of witness to be represented by Counsel**—Where witnesses have been

5.—**Execution of decree, application for—Execution of decree—Declaratory decree erroneously construed as a decree capable of execution—Orders in execution after notice to judgment-debtor and without contest by him—Subsequent objection that the decree was not capable of execution—Judgment-debtor bound by previous orders**—A decree, which was in form declaratory, was construed as being capable of execution, and on several occasions execution of it was ordered (after notice to the judgment-debtor, and without contest by him), attachments of the judgment-debtor's property were made, and amounts

PRACTICE—continued.**I. CIVIL CASES—continued.**

alleged to be due were paid. Upon a subsequent

Mad, 54, and Mungul Pershad Dicht v. Grijja Kant Lakiri Chowdhry, L. R., 8 I. A., 123, followed. SUDHARAMA AYYAR v. NAGAMMAL (1901)

[I. L. R., 24 Mad., 683]

6.—Execution proceedings—Jurisdiction—
Decree cannot be varied in the execution department.—A decree of the High Court declared the title of the plaintiffs to share in all the properties described in the schedules thereto, excepting in two *mauzas*, which were declared to belong to the defendants. In execution, the objection was taken that certain parcels sued for and decreed as *kasht*, or *jote*, lands were in reality *kamat* lands, which necessarily, from the character of that holding, must have belonged to the proprietors of the *mauzas* within the limits of the property.

variation of the decree. But the objection was allowed by the High Court's decree now appealed from. *Held*, reversing the order of the High Court, that it was beyond the jurisdiction of the executing Court to vary the decree, which plainly awarded the parcel as *jote* or *kasht* lands lying within the villages, and defined by measurements; so that there was no doubt as to their identity. To re-open the

substantial kind, calculated to cause great irregularity in the conduct of suits. *UDWANT SINGH v. TOKRAM SINGH (1901)*

[I. L. R., 28 Cal., 353;
s.c., I. L. R., 28 I. A., 57]

7.—Inspection and production of documents—Civil Procedure Code (Act XIV of 1852), s. 130—Where inspection of documents is

[I. L. R., 20 Cal., 424]

8.—Issues.—The fact that no issue is raised as to

v. SHRI DEV SIDHESHWAR (1901)

[I. L. R., 28 Bom., 360]

9.—Motions—Decree passed without the suit appearing on the list for hearing.—There is no

PRACTICE—continued.**I. CIVIL CASES—continued.**

fixed practice in Bombay which prevents a decree being obtained on motion without the suit's appearing on the list for hearing. *PRAGDAS SAGURMALL v. GIRDHARDAS MATHURADAS (1901)*

[I. L. R., 28 Bom., 76]

10.—Next friend—Attorney and client—Change of attorneys on record—Application for

who is *sui juris*, as long as he continues to act in that capacity. *Manick Lal Seal v. Sarat Kumari Dassee (1893)*, unreported; *Ram Chunder Roy v. Poorno Chunder Roy (1900)*, 4 C. W. N., 175

course under such circumstances would be to apply for
new next
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an order
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[I. L. R., 28 Cal., 264;
s.c., 5 C. W. N., 484]

11.—Non-appearance of plaintiff—Suit by mortgagee on mortgage—Plea by defendant of absence of consideration—Plaintiff summoned as witness by defendant to prove non-payment of consideration—Non-appearance of plaintiff at hearing—Presumption arising from such non-appearance—Duty of parties to suit to come forward as witnesses in their own case—Circular No. 1750—Civil Procedure Code (Act XIV of 1901)

mortgage. The defendant summoned the plaintiff as a witness, intending apparently to support his case by cross-examining him as to the alleged consideration. The plaintiff, however, did not appear, and the

the plaintiff that his accounts did not contain entries showing the payment of consideration to the defendant, but held that such presumption did not relieve the defendant from the obligation of proving that no such consideration had been paid. It

PRACTICE—continued.**1. CIVIL CASES—continued.**

therefore confirmed the decree. On second appeal: *Held* that the decree should be reversed and the case re-tried. The plaintiff should have been compelled, if possible, to attend and give evidence and produce the mortgage-deed and accounts, and the defendant also should have given evidence on his own behalf and have submitted to cross-examination. **SUBRAJI NARAYAN KULKARNI v. SHIDDAPA BIN KALEYANAPA HUSBI (1901)**, I L. R., 26 Bom., 392

12.—Opening case for defendant—Suit—Plaintiff's case closed—Both defendants with

(1902) . . . I. L. R., 29 Cal., 42

13.—Parties—Revival of suit—Substitution of parties—Code of Civil Procedure (Act XIV of 1892), ss 868, 872—"Pending suit"—Right to apply, accrual of—Limitation Act (XV of 1877), Sch. II, Art. 178—On directions to take an account in a suit, the suit is still "pending," within the meaning of s 872 of the Code of Civil Procedure, until

[I. L. R., 30 Cal., 809;
s.c., 7 C. W. N., 617

14.—Probate—Probate, application to recall—Citation—Proof of will—Genuineness of will—On an application by a Hindu widow for an order that the probate obtained by her husband's brother of a will alleged to have been made by her husband be recalled, she not receiving any intimation of the application for probate, and that the will be proved in her presence: *Held* that such an application

[I. L. R., 30 Cal., 628;
s.c., 7 C. W. N., 450

15.—Remand.—Case where, on objection being taken at a late stage that a mortgage-bond was not attested, as the law required, by two witnesses, the suit, instead of being dismissed, was sent back to enable plaintiff to adduce further evidence to prove that at least two of the persons whose names appeared

PRACTICE—continued.**1. CIVIL CASES—continued.**

on the face of the document were attesting witnesses. **DINAMOTEN DEBI v. BOY BHANARI KAPUR (1902)**
[7 C. W. N., 160

16.—Report of Registrar—Application to discharge or vary report—Exceptions to report—Notice of motion—Time for such notice—Belchambers' Rules and Orders of High Court, Original Side (1900), Rules 615, 617—Solicitor's mistake as to course of procedure—"Fraud, surprise or mistake, or such other special ground" under rule 617.—If a party to a suit desires to discharge or vary a report, he must adopt the procedure laid down by Rule 615 (Belchambers' Rules and Orders of the High Court, Original Side,

itself; and not to something which was altogether quite outside and independent of the certificate or report. A mistake in not complying with the procedure laid down in Rule 615 is not a "special ground," within the meaning of Rule 617, for re-opening the report. **ROYAL INSURANCE CO. v. ANTHONY COOMAR DUTT (1901)**

[I. L. R., 28 Cal., 372;
s.c., 6 C. W. N., 337

17.—Sale by Registrar—Conditions of sale—Deficiency in area—Compensation—Annulment of sale—Costs.—Where there is a substantial deficiency in the area of property sold at a Registrar's sale, so that the purchaser would not have offered the price that he did if he had been aware of such deficiency, the Court will not compel the purchaser to take the property with compensation, but will discharge him from the sale. **KISSORY MOHAN ROY v. KALI CHARAN GHOSH (1896), 1 C. W. N., 106, distinguished. **JACOBS v. REVELL (1900)**, 2 Ch. Div., 859, referred to. The purchaser so discharged from his sale is entitled to repayment of the purchase-money, with interest from the date of payment into Court, and the costs, charges and expenses, incurred by reason of his bidding for and being declared the purchaser of the property, and of and incidental to the application to be discharged from his purchase. *Quare*—whether he is entitled to the costs of a survey made by him to ascertain the area of the property. **BAIRI OF BENGAL v. ANTHONY KUMAR MUKERJEE (1901)****

[8 C. W. N., 365

18.—Sale notification—Misdescription of property—Remedy of purchaser—Compensation—Annulment of sale.—Where the misdescription of property in the sale notification does not go to the essence of the contract, the remedy which the purchaser can claim is compensation, and not annulment of the sale. **ADMINISTRATOR**

PRE-EMPTION—continued.**1. RIGHT OF PRE-EMPTION—concluded.**

Ganga (1880), I. L. R., 2 All., 876, and *Mahammad Hasan v. Munna Lal (1886)*, I. L. R., 8 All., 434, referred to. As to the effect which the

substituted, but was of no more value than if the memorandum of village customs had been completely silent on the subject; and it could not be inferred from such an entry alone that the custom had fallen

could be attached to it. In the matter of *Juggun Lal (1880)*, 7 C. L. R., 856, and *Queen-Empress v. Gress Chunder Banerjee (1884)*, I. L. R., 10 Cal., 1024, referred to. The cases of *Uman Parshad*

3.—Under-proprietor—Act XVIII of 1876 (*Oudh Laws Act*), Part III, Chapter II—"Member of the village community"—Right of under-proprietor to pre-empt a mahal sold by a proprietor.—Held that, under cl. 8 of s 9 of the Oudh Laws Act, 1876, a person holding an under-proprietory interest in a mahal sold by the Court of Wards, on behalf of the proprietor of the mahal, was entitled to pre-emption in respect of such mahal as against the vendor. *DRIG BIRAI SINGH v. DEPUTY COMMISSIONER OF GONDA* (r s. 1902)

[I. L. R., 24 All., 420]

2 CONSTRUCTION OF WAJIB-UL-ARZ

4.—Co-sharer—*Wajib-ul-arz*—Sale to a

PRE-EMPTION—continued.**2. CONSTRUCTION OF WAJIB-UL-ARZ—continued.**

Weekly Notes, 1899, p. 126, referred to. *NARAIN SINGH v. PARRAT SINGH (1901)*

[I. L. R., 23 All., 247]

5.—"Ekjaddi"—*Wajib-ul-arz*—Interpretation of document—Meaning of the term "ek jaddi".—Held that the term "ek jaddi," used in the pre-emption clause of a *wajib-ul-arz*, signifies persons descended from a common ancestor through the male line. *Guneshee Lal v. Zarat Ali, N.-W. P. H. C. Rep.*, 1870, p. 343, referred to. *CHATAR SINGH v. KALYAN SINGH (1900)* I. L. R., 23 All., 32

6.—"Hissadar"—*Wajib-ul-arz*—Interpretation of document—The clause in the *wajib-ul-arz* of

pre-emption to a *hissadar* of a superior class upon a sale to a *hissadar* of an inferior class. *Ilahi Jan v. Pheku, Weekly Notes*, 1895, p. 9, and *Ilahi Baksh v. Ghulam Abbas, Weekly Notes*, 1898, p. 15, referred to. *SHEOBALLAH SINGH v. LACHMIDHAR (1901)* I. L. R., 23 All., 427

7.—"Hissadaran shikmi"—*Wajib-ul-arz*—Construction of document—Meaning of the term "hissadaran shikmi".—Held that the expression "hissadaran shikmi," as used in the clauses of a *wajib-ul-arz* dealing with various classes of persons who were entitled to pre-emption in preference to strangers, did not necessarily imply any idea of subordination, but was rightly considered applicable to persons who were co-sharers in the particular *khattu* of the patti in which the land sold was situated. *ABDUL SHAKUR v. MENDAI (1901)* I. L. R., 23 All., 260

8.—Mortgage—Mortgage by conditional sale—Accrual of right of pre-emption when sale becomes absolute—*Wajib-ul-arz*—Partition of

do not take it, then to pre-emption. and, in case of refusal by all the sharers before mentioned, he shall have power to transfer it to a stranger." While this *wajib-ul-arz* was in force, namely, in 1890, certain property, to which its provisions applied, was mortgaged by a deed of conditional sale. In 1894, after partition of the mahal, a new *wajib-ul-arz* was framed for the mahal in which the

PRE-EMPTION—continued.**2. CONSTRUCTION OF WAJIB-UL-ARZ—concluded.**

[I. L. R., 24 All., 493]

3. PURCHASE-MONEY.**9.—Mortgage—Mortgage-money fraudulently**

between the price paid by Shubrat Singh and the consideration mentioned in the deed of mortgage. They based their suit mainly upon a stipulation in the deed, to the effect that, if the mortgage money due to the mortgagees was in any way jeopardized, the mortgagees would be entitled to realize it with interest at 9 per cent per annum, and partly upon

4. LOSS OR WAIVER OF RIGHT

10.—Sale—Right of re-purchase, provided in a conveyance—Contract running with the land—In a conveyance executed by plaintiffs in favour of

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See CONVICTION . 5 C. W. N., 567

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See MADRAS CITY MUNICIPAL ACT, s. 341.
[I. L. R., 26 Mad., 457]

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| (c) PRIVACY | „ |

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See RIGHT TO USE OF WATER

[I. L. R., 29 Calc., 100
„ 30 Calc., 281]

EASEMENTS.

(a) HOUSES AND OTHER BUILDINGS.

1.—Projection—Beneficial enjoyment of the dominant owner—Cornices projected over another's land, as ornamentation—Indian Easements Act (V of 1882)—There can be no prescriptive right to a projection which has been erected merely for the

PRESCRIPTION—concluded.**EASEMENTS—concluded.****(a) HOUSES AND OTHER BUILDINGS—concluded.**

purpose of ornamentation. *John George Bagram v. Khettranath Karformah* (1869), 3 B. L. R. (O. C.), 18, 47, referred to. *KRITTA KUMARI DASSI v. PUDDOMONI BEWAH* (1903)

[I. L. R., 30 Calc., 503;
S.C., 7 C. W. N., 649]

(b) LIGHT AND AIR

2.—Injunction—Alteration of easement—New windows higher than the old ones—New easement—Indian Easements Act (V of 1882), s. 23.

Plaintiff had two windows in the rear wall of his house. In 1886 he rebuilt his house, and opened new windows, which were of nearly the same size, but were a little higher than the old ones. In 1899 defendant built his house and blocked up these two new windows. The plaintiff sued for an injunction. The first Court dismissed the suit. The lower Appellate Court reversed the decree and granted an

tenement was rather less than before. On second appeal: *Held*, reversing the decree and dismissing the suit, that the easement claimed in respect of the

(c) PRIVACY

3.—Right of privacy—Suit to prevent opening of windows—Usage, proof of.—In a suit for closing the window on the wall of the defendant, and for the issue of a permanent injunction restraining the defendant from opening windows in future

in any one house in the village so as to overlook the female apartments of another, but not that the villagers had been in the habit of preventing their co-villagers from opening windows in such a manner. *Held* that the usage as to the right of privacy was not proved. Also that the fact that the defendant's wall had been standing there over 50 years, and during this period no window had been opened, was not sufficient to give the plaintiff a prescriptive right to prevent the defendant opening a window in that wall. *SHI NARAIN CHOWDHRY v. JODOO NATH CHOWDHRY* (1900)

[5 C. W. N., 147]

PRESIDENCY BANKS ACT (XI OF 1876).

—ss 38, 37—Bank of Bombay—Power of Directors to lend money on equitable mortgage.—The Directors of the Bank of Bombay discounted at different times promissory notes for sums amounting in all to about Rs. 60,000, drawn by the firm of Fazulbhoy Meherally Chinoy in favour of one Meherally Mahomed Chinoy, who, subsequently appeared, was a partner in the firm, but was not

transacted with the Directors of an equitable mortgage on certain immovable properties situate in Bombay and Mahabaleshwar, as security for the then existing and future indebtedness of the said firm or Meherally to the Bank. The notes became due, and were dishonoured, the firm having in the meanwhile become insolvent. The Bank thereupon sued the Official Assignee, as assignee of the firm's estate, to recover

that mortgage, *ed. Held* said Act, securities, 37 of the immovable property created as a security for a bond *fide* liability already in existence. The words of s. 37 impose a restriction on making a loan on mortgage of immovable property, not upon the Bank but upon the Directors. As between the Directors and the Bank, the Directors would be liable for any loss resulting from the breach of the provisions of the sections, but the mortgagors could not repudiate the obligation into which they purported to enter, and the Official Assignee was not in a more favourable position. *TURNER v. BANK OF BOMBAY* (1900)

[I. L. R., 25 Bom., 52]

PRESIDENCY MAGISTRATE.**—concurrent jurisdiction of—**

See CONORER . . . 7 C. W. N., 889

—duty of—

See DISCHARGE OF ACCUSED
[I. L. R., 27 Bom., 84]

—jurisdiction of—

See DISCHARGE OF ACCUSED
[I. L. R., 28 Calc., 652]

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION—OFFENCE COMMITTED ON THE HIGH SEAS.
[I. L. R., 25 Bom., 656]

PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890)—concluded.

under the supervision of the Company's goods clerk at Talegaon, and were so allowed to be put by the Company's servants at Talegaon, in spite of a circular issued to them by the Traffic Manager to prevent the overcrowding of cattle. When the cattle were detained at the goods yard of the Company at Wadi Bandar, they were found suffering from the effects of overcrowding. The Bombay Society for the Prevention of Cruelty to Animals prosecuted the Railway Company under s. 21 of Act XLVIII of 1860 and s. 3 (b) of the Act for the Prevention of Cruelty to Animals (Act XI of 1890). The Presidency Magistrate, who tried the case, referred to the *Times* (about the following two questions:—(1)

certainly not when the act is done contrary to the orders of the master *CAWASJI MEHWANJI SHROFF v. GREAT INDIAN PENINSULA RAILWAY COMPANY* (1902) I. L. R., 28 Bom., 609

PREVIOUS ACQUITTAL.

- See CRIMINAL PROCEDURE CODE, s. 403.*
[I. L. R., 24 Mad., 641]
See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS.
[I. L. R., 28 Calc., 689]
See SECURITY FOR GOOD BEHAVIOUR
[5 C. W. N., 28]
See WHIPPING
[I. L. R., 25 Bom., 712]

PREVIOUS CONVICTION.

- See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS.*

PRIMOGENITURE.

- See HINDU LAW—CUSTOM—PRIMOGENITURE.*
See SUCCESSION.

[I. L. R., 30 I. A., 190]

PRINCIPAL AND AGENT.

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| 1. AUTHORITY OF AGENTS | 880 |
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PRINCIPAL AND AGENT—continued.

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| 4. LIABILITY OF PRINCIPAL | " |
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See BROKER.

[I. L. R., 30 Calc., 202]

See CONTRACT—WAGERING CONTRACTS.

[I. L. R., 23 All., 165
25 All., 639]

See EASEMENT . I. L. R., 28 Mad., 66**See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—PRINCIPAL AND AGENT.****See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY PAYMENT OF RENT.**

[I. L. R., 28 Bom., 410]

See LIMITATION ACT, 1877, SCH II, ART. 50 . I. L. R., 24 All., 27**See ONUS OF PROOF—PRINCIPAL AND AGENT.****—application of rule that notice to agent binds principal—****See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.**

[I. L. R., 29 I. A., 203]

—authority of agent—**See CROWN LANDS.**

[I. L. R., 28 Mad., 268]

See EASEMENT . I. L. R., 28 Mad., 51**—liability of principal—****See RIOTING . I. L. R., 28 Calc., 504****1. AUTHORITY OF AGENTS.**

1.—*Contract Act (IX of 1872), s. 230—Agency coupled with an interest—Suit by agent, in his own name, on contract not entered into by him as agent—Maintainability of suit—A document was executed in favour of plaintiff by the members of a Malabar devasom, whereby, in consideration of advances made by plaintiff, all the properties of the devasom were given over to him on lease for eighteen years. Plaintiff was given*

PRINCIPAL AND AGENT—continued.**1. AUTHORITY OF AGENTS—concluded.**

is one made by the agent, he has no cause of action, because there is no privity. *SUBRAHMANYA PATTAR v. NARAYAN NAYAR* (1900)

[L. L. R., 24 Mad., 130]

2. RATIFICATION.

3.—Government—Government officers—Scope of authority.—The plaintiffs sued the Secretary of State (defendant 1) and one Makan Haribhai (defendant 2), who was an overseer in the Government Local Fund Department in the Surat district, for the price of bamboos sold to the second defendant for the purpose of erecting sheds during an epidemic of plague in 1897. The plaintiffs alleged that they supplied the bamboos to the second defendant on his representing that he was acting under the orders of the Assistant Collector and the *Mamladar*. The first defendant denied that Government had ever authorised the purchase of the bamboos, and the second defendant denied that he had made the alleged representation. The lower Court passed a decree against the first defendant. On appeal to the High Court. *Held* (reversing the decree) that there was no evidence to show that the second defendant was authorised by the Government to purchase the

3. REVOCATION

4.—Registration—Contract Act (IX of 1932), s. 208.—If the authority of the agent to

4 LIABILITY OF PRINCIPAL.

5.—Fraud of agent—Liability of principal.—Scope of agent's authority—Fraud in the interest of the agent and not of the principal—Theft and forgery by servants, no duty to guard against—

PRINCIPAL AND AGENT—continued.**4. LIABILITY OF PRINCIPAL—concluded.**

Neglect—Proximate and direct cause of loss—Presumption—Guarantee by broker in one transaction; effect of, on subsequent transactions, where

principal can be shown; but, where the fraud is committed by the agent when he was acting, not in the interest of his employers but entirely in his own interests, the principal cannot be held responsible for the consequences of his fraudulent conduct. *Barwick v. English Joint Stock Bank* (1867),

6.—Tenant—Suit for Damages.—A master or

[s.c., 7 C. W. N., 126]

PRINCIPAL AND AGENT—concluded.**6. LIABILITY OF AGENTS.**

7.—*Illegal cess—Khurcha—Liability of agent to account for sums realized, not legally recoverable by principal—Bengal Tenancy Act, s. 74—An agent is liable to account to his principal for the*

NAGENDRABALA DASGI v. GURU DOYAL MUKERJI
(1903) I. L. R., 30 Calc., 1011;
[s.c., 7 C. W. N., 535]

PRINCIPAL AND SURETY.

See SURETY.

PRIORITY.

See SALE IN EXECUTION OF DECREE—
DISTRIBUTION OF SALE-PROCEEDS.

See VENDOR AND PURCHASER—INVALID
SALES I. L. R., 28 Bom., 169

—of deeds—

See MORTGAGE—SALE OF MORTGAGED
PROPERTY.

—of registered over unregistered deed—

See REGISTRATION ACT (III OF 1877)—

s. 49;

s. 49 AND 50;

s. 50

—of Official Assignee—

See INSOLVENCY—CLAIMS OF ATTACHING
CREDITORS AND OFFICIAL ASSIGNEE.

See INSOLVENT ACT (11 & 12 VICT. c. 21).
[I. L. R., 28 Calc., 419]

PRISONER.

See ACCUSED PERSON.

See EXAMINATION OF ACCUSED PERSONS.

See INSOLVENT ACT (11 & 12 VICT.
c. 21), s. 8 I. L. R., 28 Bom., 649

See PARDON.

See WRONGFUL CONFINEMENT.
[I. L. R., 30 Calc., 95]

PRISONERS ACT (III OF 1900).

—ss. 2, 11—

See CORONER . . . 7 C. W. N., 889

—ss. 7, 8, 9—

See HAZAS COMPT—WRIT OF.
[I. L. R., 29 Calc., 238]

PRIVACY.

See PRESCRIPTION—EASEMENTS—PRI-
VACY.

PRIVATE DEFENCE, RIGHT OF.

See ABSCONDING OFFENDER.

[I. L. R., 29 Calc., 417]

See PENAL CODE, s. 424.

[I. L. R., 25 Mad., 739]

See RIOTING . . . I. L. R., 24 All., 298

See THUMB IMPRESSIONS.

[I. L. R., 30 Calc., 97]

1.—*Act XLV of 1860 (Indian Penal Code), s. 147—Riot—Private defence of property—Act XLV of 1860 (Indian Penal Code), ss. 96 et seq.—Deliberate aggression by party entitled to possession.—Party A sowed a crop in a field to the possession of which apparently they were entitled. Party B, claiming the field and the crop as theirs, entered upon the land and began to cut the crop. Party A, having watched party B enter upon the land, took counsel together and then proceeded to attack party B, and a fight ensued in which grievous hurt was caused. Held that it was not open to party A to plead that they were acting in the exercise of their right of private defence of property. Queen-Empress v. Prag Dat (1898), I. L. R., 20 All., 459, followed. Queen-Empress v. Nareang Pathabhai (1890), I. L. R., 14 Bom., 411, distinguished. Pachkaur v. Queen-Empress (1897), I. L. R., 24 Calc., 656, not followed. KING-EMPEROR v. KALLI (1901) . . . I. L. R., 24 All., 143*

2.—*Penal Code (Act XLV of 1860), ss. 97, 101, 104—Private defence—"Protect a right"—Unlawful assembly.—The villagers belonging to C walked*

accused were justified, in the circumstances, in exercising their right of private defence; and the harm inflicted was not more than appeared to have been necessary for the purpose of self-defence. REGULA BHEEMAPPA v. EMPEROR (1902)
[I. L. R., 28 Mad., 249]

PRIVATE LAND.

See BENGAL TENANCY ACT, s. 120 (2).
[7 C. W. N., 400]

PRIVATE STREET.

See BOMBAY DISTRICT MUNICIPAL ACT
(BOM ACT VI OF 1873), ss. 33 AND
42 . . . I. L. R., 37 Bom., 231

PRIVILEGE.

—from suit—

See DEFAMATION.

See LIBEL.

See SECRETARY OF STATE

[I. L. R., 27 Bom., 189]

PRIVILEGED COMMUNICATION.

See LIBEL.

—Penal Code (Act XLV of 1860), s. 499, Eighth Exception—Defamatory communication made in official confidence—Malice in fact—Privilege of public officer to refuse to disclose official communication, nature of—Public interests—Indian Evidence Act (I of 1872), s. 123—Where a defamatory statement is made on a privileged occasion, the complainant must show that there was malice in fact. S. 124, Indian Evidence Act, makes the public officer, to whom a communication is made in official confidence, the judge of whether such communication should or should not be divulged in the public interest, and he is entitled to decide whether the public interests would suffer by its production, and, if he considers they would so suffer, to refuse to produce it.

888; Hence referred to defamatory confidence, c publication scandal in the officer; that the case and not

PRIVY COUNCIL.

See APPEAL TO PRIVY COUNCIL

See PRIVY COUNCIL, PRACTICE OF

PRIVY COUNCIL, PRACTICE OF.

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| 1. SPECIAL LEAVE TO APPEAL | 885 |
| 2. CONCURRENT JUDGMENTS ON FACTS | 886 |
| 3. COSTS | " |

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE.

1 SPECIAL LEAVE TO APPEAL.

1.—Case under appealable value—Civil Procedure Code (Act XIV of 1882), ss 600, 596—Privy Council, special leave to appeal to—Practice—In preferring an appeal to the Privy Council, in a case which is under the appeal-

PRIVY COUNCIL, PRACTICE OF—concluded.**1. SPECIAL LEAVE TO APPEAL—concluded.**

able value, a person who asks for special leave to appeal should first apply to the High Court for a certificate, under the second part of s 600, that the case "is otherwise a fit one for appeal." Special leave to appeal will be given only in cases which involve a substantial question of law. The word 'and,' in the first part of s 596, means 'and' and not 'or' MOTI CHAND v GANGA PRSHAD SINGH (1901) 6 C. W. N., 382; [s.c., I. L. R., 24 All., 174; L. R., 29 I. A., 40]

2 CONCURRENT JUDGMENTS ON FACTS.

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be erroneous, is none the less applicable, although the Courts have not taken precisely the same view of the weight to be attached to each particular item of evidence. A case where one Court has relied on the oral, and the other on the documentary, evidence is within the rule. RAM ANUGRA NARAIN SINGH v CHOWDHRY HANUTMAN SAHAI (1902) [I. L. R., 30 Calc., 303; s.c., 7 C. W. N., 225; L. R., 30 I. A., 41]

3 COSTS

3.—Costs of printing record.—In consequence of reckless extravagance in the printing of the record, their Lordships directed that only the costs of two volumes should be allowed, limited in respect of them to what is fair and reasonable. VENKATAYANNA GARU v VENKATARAMANAYANNA (1902) L. R., 29 I. A., 156; s.c., I. L. R., 25 Mad., 678; 7 C. W. N., 1

PROBABLE CAUSE.

See REASONABLE AND PROBABLE CAUSE.

PROBATE.

Col.

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| 1. POWER OF HIGH COURT TO GRANT | 837 |
| 2. OF WHAT DOCUMENTS GRANTED | " |
| 3. TO WHOM GRANTED | 838 |
| 4. OPPOSITION TO, AND REVOCATION OF, GRANT | " |

See ADMINISTRATION

[I. L. R., 26 Bom., 267]

See EXECUTOR. I. L. R., 27 Bom., 281

See PRACTICE—CIVIL CASES—PROBATE.

See WILL—VALIDITY OF WILL.

[I. L. R., 23 All., 472]

PROBATE—continued.**—appeal—**

See **LETTERS PATENT, HIGH COURTS, 1865,**
CL 16 . . . 5 C. W. N., 781

—duty—

See **COURT-FEES ACT, SCH. I, ART. 11.**

—inquiry as to value of property—

See **COURT-FEES ACT, s. 19H.**

[11 C. W. N., 898]

—of will of Sikh, grant of—

See **PROBATE AND ADMINISTRATION ACT**
(V of 1881) . . . 7 C. W. N., 895

1. POWER OF HIGH COURT TO GRANT.

1.—*Probate or Letters of Administration—Jurisdiction of High Court to grant—Estate of a deceased who had not dwell or left goods within limits of Presidency—Succession Act (X of 1865), s. 40—Letters Patent, 1862, cl. 84.—The High Court of Madras has no jurisdiction to grant probate of the will of a testator or*

2. OF WHAT DOCUMENTS GRANTED.

2.—*Nuncupative will—Act V of 1881 (Probate and Administration Act), s. 3—Will—Probate granted of a nuncupative will made by a Hindu—Held that probate may be granted of a nuncupative will made by a Hindu. In re the will of Haji Mahomed Abba (1899), I. L. R., 24 Bom., 8, followed. GOKUL CHAND v. MANGAL SEN (1903) . . . I. L. R., 25 All., 318*

3.—*Will with alterations in pencil—Practice—Application for probate of copy will with alterations in pencil—Codicil—Will, pencil*

PROBATE—continued.**3. TO WHOM GRANTED.**

4.—*Probate and Administration Act (V of 1881), ss. 6, 19—Universal legatee—Probate granted by mistake, effect of.—Under s. 6 of the Probate and Administration Act, probate can be granted only to an executor appointed by the will*

legatee by mistake: *Since* such grant was invalid from the first, and the person to whom such grant was made could not be constituted an executor so as to be empowered to exercise any of the powers conferred on executors under the Act. *Also* that a mortgage executed by such a person without the Judge's permission is bad. **PUNDIR PRATAP RAO v. GOUKARAN PERSHAD TEWARI (1902)**
[8 C. W. N., 787]

4. OPPOSITION TO, AND REVOCATION OF, GRANT.

5.—*Opposition to grant—Caveat—Judgment—creditor—Fraudulent creditor—Probate and Administration Act (V of 1881), s. 69.—The words "interest in the estate of the deceased," in s. 69 of the Probate and Administration Act, mean "interest in the estate left by the deceased." A judgment-creditor who, but for the will, would in execution of his decree have a right to give the mortgage on that*

[I. L. R., 28 Calc., 441]

6.—*Revocation of grant—Probate and Administration Act (V of 1881), ss. 60 and 87—Revocation of probate—Procedure—Practice—Motion on notice—Rule nisi—Jurisdiction—*

were likely to fade in course of time. **Gann v.**

[I. L. R., 39 Calc., 311;
s.c., 8 C. W. N., 477]

and not by rule. The procedure by rule must be confined to applications which are urgent, and where relief in the shape of an injunction is required. **IN THE GOODS OF MOHENDRA NARAIN ROY (1900)**
[6 C. W. N., 377]

PROBATE—continued.**4. OPPOSITION TO, AND REVOCATION OF, GRANT—continued.**

7. ———— *Probate and Administration Act (V of 1881), ss 50 and 83—Revocation of probate—Procedure—Practice—Motion on notice—Suit to set aside probate—Rule nisi—Will, invalidity of—Grant of probate,*

v. Nirmala Mundla (1878), 1 L. R., 4 Calc.,

(1900), 5 C. W. N., 877, referred to IN THE GOODS OF HARENDRA KRISHNA MUKERJEE (1900)

[5 C. W. N., 383

8. ———— *Effect of probate—Revocation of probate—Grounds of refusal or revocation of probate—Filing of inventory and account—Probate and Administration Act (V of 1881), ss 50 and 98—On the 7th August, 1897, one Baba Maharaj died at Poona, leaving his widow pregnant. By his will he appointed Bal Gangadhar Tilak (the appellant) and three others*

file an inventory and account as required by s. 98 of the Probate Act (V of 1881) The District Judge granted the application, and revoked the

Act (V of 1881) was not a ground for revocation. There was no circumstance in the case from which

PROBATE—concluded.**4. OPPOSITION TO, AND REVOCATION OF, GRANT—concluded.**

willful omission on the part of the executors could be inferred. The grant of probate is decisive only of the genuineness of the will propounded, and of the

words "become useless and inoperative", in s. 50, cl. 41, of the Probate Act (V of 1881), imply the discovery of something which, if known at the date of the grant, would have been a ground for refusing it, e.g., the discovery of a later will or codicil, or subsequent discovery that the will was forged, or that the alleged testator is still living.

BAL GANGADHAR TILAK v. SAKWABAI (1902)

[L. R., 28 Bom., 792

PROBATE AND ADMINISTRATION ACT (V OF 1881).

See LETTERS OF ADMINISTRATION.

[L. R., 28 Calc., 587

—Application to Sikhs—Sikhs, if Hindus—Hindu law—Will—Proof of execution—Brahmos, if Hindus—Interpretation of Statutes—Meaning of the word "Hindu", as used in old and new Acts—Lapses from orthodox practice,

dict and ceremonial observance held not to

—s. 3—

See PROBATE—OF WHAT DOCUMENTS GRANTED . 1 L. R., 25 All., 313

—ss. 4, 12, 14, 15, 19, 38, 82, 187—

See REPRESENTATIVE OF DECEASED PERSON . 1 L. R., 30 Calc., 1044

—s. 7—

See WILL, CONSTRUCTION

[5 C. W. N., 310

PROBATE AND ADMINISTRATION ACT (V OF 1881)—continued.

—ss. 12, 14, 15—

See ante, ss. 4, 12, ETC.

—s. 19—

See ante, ss. 4, 12, ETC.

See PROBATE—TO WHOM GRANTED.

[6 C. W. N., 787

—s. 38—

See ante, ss. 4, 12, ETC.

—s. 47—Unadministered estate—Letters of Administration de bonis non.—Where letters of administration to the deceased's estate were granted to the widow, limited during the minority of her

no bar to such grant IN THE GOODS OF GIRI CHANDRA MITTER (1902). 6 C. W. N., 581

—s. 50—

See LETTERS OF ADMINISTRATION.

[6 C. W. N., 812

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.

[5 C. W. N., 377, 383

[I. L. R., 28 Bom., 792

—ss. 51, 78—

See SURETY—DISCHARGE OF SURETY.

[I. L. R., 29 Calc., 88

—ss. 51, 86, 90—

See APPEAL. I. L. R., 28 Calc., 149

—s. 69—

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.

[I. L. R., 28 Calc., 441

—s. 78—

See ante, ss. 51, 78.

—s. 82—

See ante, ss. 4, 12, ETC.

—s. 83—

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT. 5 C. W. N., 383

—s. 84—

See WILL—VALIDITY OF WILL

[6 C. W. N., 787

—s. 86—

See ante, ss. 51, 86, 90.

—s. 87—

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT. 5 C. W. N., 377

—s. 90—

See ante, ss. 51, 86, 90.

PROBATE AND ADMINISTRATION ACT (V OF 1881)—concluded.

—s. 98—

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.

[I. L. R., 28 Bom., 792

—s. 187—

See ante, ss. 4, 12, ETC.

PROBATE DUTY.

See COURT-FEES ACT, SCH. I, ART. 11.

PROCEDURE (CIVIL)

See CIVIL PROCEDURE CODE.

See ALSO THE PARTICULAR HEAD WHICH IS APPLICABLE.

PROCEDURE (CRIMINAL).

See CRIMINAL PROCEDURE CODE.

See ALSO THE PARTICULAR HEAD WHICH IS APPLICABLE.

PROCEEDS OF SALE.

See SALE-PROCEEDS.

PROCESS.

—payment of fees for—

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE

[I. L. R., 26 Mad., 421

—refusal to issue—

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

[I. L. R., 30 Calc., 508, 508n

—service of—

See SUMMONS, SERVICE OF.

—to compel attendance of witness—

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES

[I. L. R., 30 Calc., 121

PROCESSION.

—in highway—

See PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE.

[I. L. R., 26 Mad., 378

See RELIGION, OFFENCES RELATING TO.

[I. L. R., 26 Mad., 554

PROCLAMATION.

See ASCENDING OFFENDER.

[I. L. R., 29 Calc., 417

PRODUCTION OF DOCUMENTS.

See PRACTICE—CIVIL CASES—INSPECTION AND PRODUCTION OF DOCUMENTS.

PRODUCTION OF PROPERTY.

— *Criminal Procedure Code (Act V of 1898), ss. 94, 96, 517, 523*—Security required for production of documents. *See* *State v. ...*

... to hold the ornaments in deposit with him as trust and to produce them when required. In the meantime the complainant should have his claim proved by a competent Court. Held that the order, having been made in a matter which had ...

PROFITS.

See MESNE PROFITS

PROMISSORY NOTE

See HINDU LAW—CONTRACT—PROMISSORY NOTE.

See SALE OF GOODS.

[I. L. R., 25 Mad., 580]

— suit on—

See ATTORNEY AND CLIENT.

[I. L. R., 20 Calc., 595]

See CONTRACT—WAGERING CONTRACTS.

[I. L. R., 29 Calc., 461]

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR

[I. L. R., 28 Mad., 322]

See INTEREST—MISCELLANEOUS CASES—BILL OF EXCHANGE

[I. L. R., 30 Calc., 448]

See JURISDICTION—CAUSES OF JURISDICTION—CASES OF ACTIONS—NEGOTIABLE INSTRUMENTS

[I. L. R., 24 Mad., 259]

PROMISSORY NOTE—concluded.

— suit on—concluded.

See NEGOTIABLE INSTRUMENTS—SUMMARY PROCEDURE ON.

See PRACTICE—CIVIL CASES—STAT OF PROCEEDINGS

[I. L. R., 30 Calc., 627]

ASSIGNMENT OF AND SUITS ON, PROMISSORY NOTES.

1.—Endorsement—*Negotiable Instruments Act (XXVI of 1891), s. 51*—Promissory note in ...

such an endorsement cannot operate as an endorsement unless the ... on as ... in ... of ... is not *ultra vires*. *MUHAMMAD KUMARHALLI v. RANGA RAO* (1901) [I. L. R., 24 Mad., 654]

2.—False or forged note—Debt—Suit for recovery of—Promissory note, false or forged—Whether plaintiff can succeed on proof of loan.—Where the plaintiff brought a suit for recovery of ...

3.—Presumption of payment—Presumption of payment arising from possession of note by debtor—Evidence rebutting presumption—Books of account kept in course of business—Act I of 1873 (Evidence Act), s. 31.—In a suit on a promissory note, where the note and the security for its payment were in the possession of the defendant: Held that, under the circumstances of this case, as shown by the evidence, the *prima facie* presumption that the note had been paid was rebutted. Books regularly kept in the course of business can, under the Evidence Act, be used, not only for the purpose of refreshing the memory of a witness, but also as corroborative evidence of the story he tells. *BUON HONG KONG v. RAMANATHAN CHETTI* (1902)

[I. L. R., 29 Calc., 334;
a.c., 6 C. W. N., 401;
L. R., 29 I. A., 43]

PROOF.

See OATHS OF PROOF

PROPERTY.

See ATTACHMENT—SUBJECTS OF ATTACHMENT.

See IMMOVABLE PROPERTY.

See JOINT PROPERTY.

See MOVABLE PROPERTY.

—divesting of—

See HINDU LAW—

ADOPTION—EFFECT OF ADOPTION;
INHERITANCE—DIVESTING OF, EX-
CLUSION FROM, AND FORFEITURE
OF, INHERITANCE.

—found on accused—

See APPEAL IN CRIMINAL CASES—
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[I. L. R., 30 Calc., 690]

—injury or obstruction to enjoyment
of—

See INJUNCTION—OBSTRUCTION OR IN-
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See RIGHT OF SUIT—INJURY TO ENJOY-
MENT OF PROPERTY.

—preservation of, pending litigation—

See EXECUTION OF DECREE—STAY OF
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—production of—

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—restitution of—

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[5 C. W. N., 250]

—seized by police—

See CRIMINAL PROCEDURE CODE, s. 523.

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—exercise of—

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[7 C. W. N., 562]

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—commencement of—

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NARIES.

—revival of—

See CRIMINAL PROCEDURE CODE, s. 437.

See REVISION—CRIMINAL CASES—DIS-
CHARGE OF ACCUSED.

—stale—

See RIOTING . . . 7 C. W. N., 245, 301

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—adoption by—

See HINDU LAW—ADOPTION—WHO MAY
OR MAY NOT ADOPT.

[I. L. R., 28 Bom., 491]

—removal of—

See NUISANCE—UNDER CRIMINAL
PROCEDURE CODE—REMOVAL OF
PROSTITUTES.

PROVIDENT FUNDS ACT (IX OF 1897).

—s. 4—*Insolvent Debtors' Act* (11 & 12 Vict.,
c. 21), ss. 7, 30—Vesting order—Sum due to an
insolvent from a Provident Institution—Right of
Official Assignee to claim—Construction of
Statutes—Distinction between enactments
affecting vested rights and those regulating
procedure.—A member of a Railway Provident
Institution, who had made compulsory deposits

date of the vesting order, but before the retirement
of the insolvent, the Provident Funds Act, 1897,
came into force, s. 4 of which provides that,
after the commencement of that Act, the Official
Assignee shall not be entitled to or claim any such
compulsory deposits in any Railway Provident Fund.

enactments affecting vested rights and those which
merely affect procedure recognized. *Javanmal
Jitmal v. Muktabai*, I. L. R., 14 Bom., 516,
referred to. Under s. 7 of the Insolvent
Debtors' Act, the right of the insolvent to be paid the
sum standing to his credit in the fund, on his
retirement from service, vested in the Official
Assignee. *OFFICIAL ASSIGNEE OF MADRAS v.
DALGAIRNE* (1902) . . . I. L. R., 28 Mad., 440

**PROVINCIAL SMALL CAUSE COURTS
ACT (IX OF 1887).**

See SMALL CAUSE COURT, MOFUSSIL—
JURISDICTION—DAMAGES.

[I. L. R., 28 Mad., 176]

—s. 15—

See SMALL CAUSE COURTS, MOFUSSIL—
JURISDICTION—REST.

[I. L. R., 24 Mad., 356]

PROVINCIAL SMALL CAUSE COURTS

ACT (IX OF 1887)—*concluded.*

—s. 15 and Sch. II, Art. 35 (j).

See SMALL CAUSE COURT, MORUSSIL—
JURISDICTION—WRONGFUL DETRAINMENT.
[I. L. R., 35 Mad., 540]

—s. 18—

See MUNSIF . I. L. R., 28 Mad., 212

—s. 18—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—GENERAL CAUSES . I. L. R., 25 Bom., 528

—s. 23—

See SMALL CAUSE COURT, MORUSSIL—
JURISDICTION—TITLE, QUESTION OF.
[I. L. R., 25 Bom., 635
8 C. W. N., 687]

—s. 32—

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—Sch. II, cl. (8)—

See SMALL CAUSE COURT, MORUSSIL—
JURISDICTION—RENT
[I. L. R., 24 Mad., 356]

—cl. (13)—

See SMALL CAUSE COURT, MORUSSIL—
JURISDICTION—IMMOVABLE PROPERTY.
[I. L. R., 23 All., 437]

—cl. (18)—

See SMALL CAUSE COURT, MORUSSIL—
JURISDICTION—TRUSTS.
[I. L. R., 24 All., 208
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—cl. (21)—

See SALE IN EXECUTION OF DECREE—
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—cl. (31)—

See SMALL CAUSE COURT, MORUSSIL—
JURISDICTION—
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MENSURE PROFITS

—cl. (35) (j)—

See *ante*, s. 15 AND SCH. II, ART. 35 (j).

—cl. (35) (k)—

See SMALL CAUSE COURT, MORUSSIL—
JURISDICTION—ATTACHMENT.
[I. L. R., 28 Mad., 504]

—cl. (38)—

See SMALL CAUSE COURT, MORUSSIL—
JURISDICTION—MAINTENANCE.
[I. L. R., 23 All., 495]

PROVOCATION.

See DAMAGES—SUITS FOR DAMAGES—
TORT . . . 6 C. W. N., 915

See MURDER . I. L. R., 28 Calc., 571

PROXY.

See COMPANY—MEETINGS AND VOTING.

[I. L. R., 27 Bom., 113]

PUBLIC BODY.

—protection of—

See MADRAS CITY MUNICIPAL ACT, 1884,
= 392, 433 AND 454.

[I. L. R., 25 Mad., 116]

PUBLIC CONVEYANCES.

See HACKNEY-CARRIAGE ACT.

PUBLIC DEMANDS RECOVERY ACT
(BEN. ACT VII OF 1880).

1.—Bengal Act VII of 1868, s. 2—*Suit to set aside a sale in execution of a certificate—Act XI of 1859—Civil Procedure Code, ss 244, 312.—Held by the Full Bench (RAMPHI, J. dissenting) that an appeal to the Commissioner under s. 11 of Bengal Act VII of 1868 is not the only remedy*

overruled. RAM TARUCK HAZRA v. DILWAB ALI
(1901) . . . I. L. R., 28 Calc., 73;
[s.c., 6 C. W. N., 521]

2.—*Sale in execution of a certificate against the recorded tenant alone, whether it passes the entire holding—A certificate under the Public Demands Recovery Act can only be enforced, against the person whose name is entered in such certificate, as if it were a personal debt of his. So where, in execution of a certificate taken against the recorded tenant, the landlord put the holding to sale: Held that the right, title and interest of the recorded tenant alone, and not the entire holding, passed by the sale. The interest of the other joint tenants was not affected by the sale. Shakaat Hossain v. Sani Kar (1892), I. L. R., 19 Calc., 783, referred to. Jeolal Singh v. Ganga Pershad (1884), I. L. R., 10 Calc., 396, and Dityai Behari v. Hargobind (1899), I. L. R., 26 Calc., 577, distinguished. RUPRAM NAMASUDRA v. ISWAR NAMASUDRA (1902) . . . 6 C. W. N., 302*

—ss. 2, 7 (f), 8 (b), 10, 10—

—Agriculturists' Loans Act (XII of 1884), s. 5—*Taccari—What passes at a sale under the Public Demands Recovery Act—Right, title and interest of the judgment-debtor—Hypothecation of land—Mortgage—Transfer*

PUBLIC DEMANDS RECOVERY ACT (BEN. ACT VII OF 1880)—concluded.

—ss. 2, 7 (1), 8 (3), 10, 19—concluded.

of Property Act (IV of 1892), ss. 67, 99—Act XI of 1859, s. 5—Bengal Act VII of 1863, s. 1—Revenue-sale law.—When property is sold in enforcement of a certificate under Bengal Act VII of 1880, filed by the Collector to recover an amount due to the Government for an advance made under the Agriculturists' Loans Act, nothing but the judgment-debtor's right, title and interest in the property at the date of service of the notice under s. 10 of Bengal Act VII of 1880 can pass to the purchaser. Such a sale has not the effect of a sale for arrears of land-revenue, or of an assignment to the purchaser of the mortgage-interest created in favour of the Government by the bond executed by the judgment-debtor under the Agriculturists' Loans Act. **LACHMI NARAIN SINGH v. NAND KISHORE LAL DAS** (1902) I. L. R., 29 Calc., 537; [s.c., 6 C. W. N., 484]

—ss. 8, 10, 12—

—Ben. Act I of 1893, s. 15—Sale, setting aside—

—s. 10—

See ante—

ss. 2, 7 (1), 8 (3), 10, 19;
ss. 8, 10, 12.

—s. 12—

See ante, ss. 8, 10, 12.

—s. 19—

See ante, ss. 2, 7 (1), 8 (3), 10, 19.

—Suit to set aside a sale in execution of a certificate—Ben. Act I of 1893, ss. 19, 20—Act XI of 1859—Civil Procedure Code, ss. 11, 243, 27, 311, 348—**Set aside a sale**—**der the Public**—**civil nature**—**by s. 312 of**—**ARCK HAZRA**—**19 Calc., 94;** [s.c., 6 C. W. N., 246]

PUBLIC DEMANDS RECOVERY ACT (BEN. ACT I OF 1895).

—s. 7—

See **BENGAL TENANCY ACT**, s. 107.

[I. L. R., 28 Calc., 676]

See **LAND REGISTRATION ACT** (BEN. ACT VII of 1876), s. 32.

[7 C. W. N., 588]

—ss. 7, 8, 10, 23—

See **PENAL CODE**, s. 206.

[I. L. R., 28 Calc., 217]

—s. 10—

—Sale, setting aside of—Service of notice—Civil Procedure Code (Act XIV of 1882), s. 244—Where the certificate was not duly served under the provisions of s. 10 of the Public Demands Recovery Act: Held that there could be no execution, and that the proceedings held under such certificate were bad. S. 244, Civil Procedure Code, does not apply to the case of execution proceedings held under the Public Demands Recovery Act. **Ram Tarak Haara v. Mosahabali Khan** (1901), 6 C. W. N., 246; and **Janki Das v. Ram Golem Sahu** (1901), 6 C. W. N., 331, relied upon. **RAMPUR SARAY v. KHUSHAL MISSEH** (1902) 6 C. W. N., 650

—ss. 10, 17 and 21—

—Sale for arrears of cesses—Suit to set aside sale on the ground that no notice was issued under s. 10 of the Act, whether maintainable—Civil Procedure Code (Act XIV of 1882), s. 244, applicability of.—A suit to set aside a sale held for arrears of cesses, on the ground that no notice of the certificate, under s. 10 of the Public Demands Recovery Act (Ben. Act I of 1895), was served

Chunder Kumar Mukherjee v. Secretary of State (1900), I. L. R., 27 Calc., 698, and **Ram Tarak Haara v. Dilwar Ali** (1901), 6 C. W. N., 521, followed. **JANKI DAS v. RAM GOLEM SAHU** (1901)

[I. L. R., 28 Calc., 813;

s.c., 6 C. W. N., 331]

—s. 15—

See **PUBLIC DEMANDS RECOVERY ACT** (BEN. ACT VII OF 1880), ss. 8, 10, 12.

[6 C. W. N., 88]

—ss. 15, 19, 33 and 33—

—Sale in execution of certificate—"Final" meaning of—Appeal—Review—Revision—Power of revision by Commissioner.—A suit to set aside a sale in execution of a certificate under the Public Demands Recovery Act is maintainable in the Civil

PUBLIC DEMANDS RECOVERY ACT
(BEN. ACT I OF 1895)—concluded.

—ss. 15, 19, 32 and 33—concluded.

Court. *Ram Taruck Hajra v. Dilwar Ali* (1901),
I. L. R., 29 Calc., 73, referred to. An order made by
a Certificate Officer under a. 19 of Bengal Act I of
1895 is final only in the sense that it shall not be
open to appeal as provided by a. 32 of that Act, but
not in the sense that it shall not be open to review or
revision by the Commissioner under a. 33 of the
same Act. *Nasiruddin Khan v. Indronarayan*
Chowdhry (1866), B. L. R., Sup. Vol., 567;

—a. 17—

See ante, ss. 10, 17 AND 21.

—a. 19—

See ante—

ss. 7, 8, 19 22;

ss. 15, 19, 32 AND 35.

—ss. 19, 20—

See PUBLIC DEMANDS RECOVERY ACT
(BEN. ACT VII OF 1890), s. 19.

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—a. 21—

See ante, ss. 10, 17 AND 21.

—a. 22—

See ante, ss. 7, 8, 19, 22.

—ss. 32 and 33—

See ante, ss. 15, 19, 32 AND 33.

PUBLIC DUTY.

See LIBEL. I. L. R., 27 Bom., 585

See MALICIOUS SUECH

[I. L. R., 27 Bom., 590

PUBLIC HIGHWAY.See PUBLIC ROAD, HIGHWAY, STREET OR
THOROUGHFARE.**PUBLIC INTEREST.**See PRIVILEGED COMMUNICATION
[7 C. W. N., 346**PUBLIC NUISANCE.**

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

PUBLIC OFFICER.

See PUBLIC SERVANT.

PUBLIC OFFICER—concluded.

—power of Government over—

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—suit against—

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—suit to set aside order of—

See LIMITATION ACT, 1877, SEC. 11,
ART. 4

—Civil Procedure Code (Act XIV of 1892),
ss. 2 and 224—Notice of suit Official Assignee—
Practice—Procedure—The Official Assignee is a
public officer, within the meaning of a. 2 of the

HARI ALI v. KEMP (1902)

[I. L. R., 26 Bom., 809

PUBLIC POLICY.

—agreements contrary to—

See CONTRACT ACT, s. 23—ILLEGAL CON-
TRACTS—AGAINST PUBLIC POLICY.

See ENDOWMENT.

[I. L. R., 26 Mad., 31

See HINDU LAW—HUSBAND AND WIFE.

[I. L. R., 26 Calc., 761

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PUBLIC RECORD.

See EVIDENCE ACT, s. 35.

**PUBLIC ROAD, HIGHWAY, STREET
OR THOROUGHFARE.**

—obstruction to—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE

See OBSTRUCTION—TO PUBLIC WAY.

See RIGHT OF SUIT—OBSTRUCTION OF
PUBLIC HIGHWAY.

—procession in—

See RELIGION, OFFENCES RELATING TO.
[I. L. R., 26 Mad., 554

—regular line of street—

See BOMBAY CITY MUNICIPAL ACT (BOMBAY
ACT III OF 1883), s. 297.

[I. L. R., 25 Bom., 107

—what constitutes a "public street"—

See BOMBAY DISTRICT MUNICIPAL ACT
(BOMBAY ACT VI OF 1873), ss. 17, 43
AND 64. I. L. R., 25 Bom., 315

1.—Obstruction by owner of abutting
property—Madras District Municipalities Act

PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE—concluded.

(*Mad. Act IV of 1894, as amended by Mad. Act III of 1897, s. 6*). s. 3, cl. 27—“Street”—Effect

rights of the owner in the site or soil over which the street exists. It does not own the soil from the centre of the earth *usque ad calum*, but it has the exclusive right to manage and control the surface of the soil, and so much of the soil below and of the space above the surface as is necessary to enable it adequately to maintain the street as a street. It has also a certain property in the soil of the street, which would enable it, as owner, to bring a possessory action against trespassers. The effect of Art 146A of Sch. II to the Limitation Act considered. *Municipal Commissioners for the City of Madras v. Sarangapani Moondattar*, I. L. R., 19 Mad., 184, commented on. *SUNDARAM AYYAR v. MUNICIPAL COUNCIL OF MADURAI* (1901)

[I. L. R., 25 Mad., 635]

the rights of property enjoyed by others, or cause a public nuisance or interfere with the ordinary use of the streets by the public, and subject to directions or prohibitions for the prevention of obstructions to thoroughfares or breaches of the peace. Every member of the public, and every sect, has a right to use the streets in a lawful manner, and it lies on those who would restrain him in its exercise to show some law, or custom having the force of law, depriving him of the privilege. *SADAGOPACHARIAR v. RAMA RAO* (1903). I. L. R., 28 Mad., 378

PUBLIC SERVANT.

See ASCENDING OFFENDER.

[I. L. R., 29 Calc., 417]

See FALSE EVIDENCE—FABRICATING FALSE EVIDENCE.

See LAND-MARKS.

[I. L. R., 30 Calc., 1084]

See PUBLIC OFFICER.

—assaulting—

See ASSAULT ON PUBLIC SERVANT.

See POLICE ACT (V OF 1861), ss. 17, 19.

[I. L. R., 28 Calc., 411]

See TRUCE IMPRESSIONS.

[I. L. R., 30 Calc., 97]

—contempt of authority of—

See CONTEMPT OF COURT.

PUBLIC SERVANT—continued.

—disobedience of order of—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE . . . 5 C. W. N., 329

—obstruction of—

See PENAL CODE, s. 186.

[8 C. W. N., 120]

I. L. R., 30 Calc., 285

—offering bribe to—

See ACCOMPLICE.

[I. L. R., 28 Bom., 193]

—prosecution of—

See ADMINISTRATOR GENERAL.

[I. L. R., 30 Calc., 627]

—sanction of—

See SANCTION FOR PROSECUTION.

1.—Assistance to—Penal Code (*Act XLV of 1860*), s. 187—*Rendering assistance to a public servant—Refusal to sign search list, by person who attended search under Abkari law—Liability—Criminal Procedure Code (Act V of 1898)*, s. 103 (1)—*Party called upon to attend and witness a search—A person was called upon by an Abkari Inspector to attend a search held under s. 103 of the Code of Criminal Procedure, and did so. He,*

Code, to render is *ejusdem generis* with the various forms of assistance referred to in the latter part of

2.—Illegal gratification—Penal Code (*Act XLV of 1860*), ss. 161, 165—*Receiving illegal gratification as a public servant—Gratification received partly on one day and partly on another—Continuous offence—Conviction for separate offences, if proper.—Where a certain sum of money is paid to a public servant as illegal gratification on one day, and a certain sum on another day for the same purpose, the offence of receiving illegal gratification becomes a continuous offence, and there ought not to be separate convictions for offences under ss. 161 and 165 of the Penal Code for the same offence.* *JAGAT CHANDRA SARMA v. LAL CHAND DAS* (1901). 5 C. W. N., 333

3.—Peon—Peon attached to office of Superintendent of the Salt Department—Manager of

PUBLIC SERVANT—concluded.

estate under Court of Wards—Penal Code (Act XLV of 1860), s. 21, cl. 9.—An officer in the service or pay of the Government, within the terms of s. 21, cl. (9), of the Penal Code, is one who is appointed to some office for the performance of some public duty. *Held* that a peon in the service and pay of the Government, and attached to the office of a Superintendent of a Police Station, is a public servant.

tenants not to pay rent to Receiver—Penal Code (Act XLV of 1860), ss. 174, 175, 186 and 188—Land Registration Act (Ben. Act VII of 1876), s. 56.—*Held* that a Receiver appointed under s. 56 of the Land Registration Act is not a public servant.

PUBLIC STREET.

See PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE

PUBLIC THOROUGHFARE.

See PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE.

PUBLICATION.

See DEBAMATION.

See PRIVILEGED COMMUNICATION.

[7 C. W. N., 346]

PUNISHMENT.

— effect of non-publication of notification—

See EMBARKMENT . 7 C. W. N., 286

— form of—

See SENTENCE.

PUNJAB LAWS ACT.

— IV of 1872 (as amended by Act XII of 1878), ss. 10, 12, 14—

— *Pre-emption—“Village community”—Occupancy tenants in zamindari village.*—The expres-

used to denote a body of persons bound together by the tie of residence in one and the same village, amenable to the village customs, and subject to the administrative control of the village officers. A “village community” is not confined to the land-owners in the village. Occupancy tenants are members, within the meaning of the Punjab Laws Act, and so are all persons in an inferior position who belong to the village, though they may be unconnected with the land and not entitled to any right of pre-emption under the Act. *RAHMUDDIN v. BEWAL* (1903) . . . I. L. R., 30 Calc., 685; s.c., 7 C. W. N., 488; L. R., 30 I. A., 89

PURCHASE-MONEY.

See PRE-EMPTION—PURCHASE-MONEY.

— construction of agreement to reconvey on re payment of—

See VENDOR AND PURCHASER—MISCELLANEOUS CASES . 11 C. W. N., 192

— failure to pay—

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.

— refund of—

See SALE IN EXECUTION OF DECREE—

ERRORS IN DESCRIPTION OF PROPERTY SOLD;

[I. L. R., 29 Calc., 370]

SETTING ASIDE SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE-MONEY.

— suit to recover—

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See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE-MONEY.

PURCHASER.

See BENAMI TRANSACTION—CERTIFIED PURCHASERS.

See CIVIL PROCEDURE CODE, s. 244—PARTIES TO SUIT.

[8 C. W. N., 127
7 C. W. N., 64]

See LIS PENDENS.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

See PARTIES—PARTIES TO SUIT—MORTGAGES, SUITS CONCERNING.

[I. L. R., 30 Cal., 755]

See SALE IN EXECUTION OF DECREE—

JOINT PROPERTY;

[I. L. R., 23 All., 355]

PURCHASERS, TITLE OF.

SETTLING ASIDE SALE—RIGHTS OF PURCHASERS.

See VENDOR AND PURCHASER.

— bona fide—

See LIMITATION ACT, 1877, SEC. II, ART. 184.

— effect of introduction of, into joint family—

See HINDU LAW—PARTITION—RIGHT TO PARTITION—PURCHASER FROM CO-PARTNER.

— from heir—

See LETTERS OF ADMINISTRATION, [I. L. R., 23 Cal., 587]

— from Hindu widow —

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW.

— from members of Hindu family—

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS.

— liabilities of—

See BENGAL REGULATION VIII OF 1819, § 9 . . . 7 C. W. N., 111

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT. 7 C. W. N., 203

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

— of endowed property—

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

— of equity of redemption—

See MORTGAGE—SALE OF MORTGAGED PROPERTY.

See TRANSFER OF PROPERTY ACT, s. 89. [I. L. R., 30 Cal., 463]

PURCHASER—concluded.

— of joint family property—

See HINDU LAW—ALIENATION.

See SALE IN EXECUTION OF DECREE—JOINT PROPERTY.

— of right, title and interest of widow—

See HINDU LAW—WIDOW—DECREE AGAINST WIDOW, AS REPRESENTING THE ESTATE, OR PERSONALLY.

— rights of—

See HINDU LAW—

PARTITION—RIGHT TO PARTITION—PURCHASER FROM CO-PARTNER;

WIDOW—DECREE . . . AGAINST WIDOW, AS REPRESENTING THE ESTATE, OR PERSONALLY.

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE . . . 7 C. W. N., 105

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

See SALE FOR ARREARS OF REVENUE—

INCUMBRANCES—ACT XI OF 1859; [I. L. R., 30 Cal., 1071]

PURCHASERS, RIGHTS AND LIABILITIES OF.

See SALE IN EXECUTION OF DECREE—SETTLING ASIDE SALE—RIGHTS OF PURCHASERS.

— of title of—

See SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF.

Q**QUESTION OF FACT.**

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH AN APPEAL LIES OR NOT—CURRENT JUDGMENTS ON FACTS.

See PRIVY COUNCIL, PRACTICE OF—CURRENT JUDGMENTS ON FACTS.

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTION OF FACT.

QUESTION OF LAW.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH AN APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.

See ESTOPPEL—ESTOPPEL BY JUDGMENT. [I. L. R., 29 Cal., 318]

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RAILWAY COMPANY.

See PREVENTION OF CRUELTY TO ANIMALS
Act (XI of 1890), s 3

[I. L. R., 28 Bom., 608]

See RAILWAYS ACT.

1.—*Liability of Company—Passengers—Responsibility of a Railway Company, as the care of passengers—Injury to the latter by the illegal act of a fellow passenger—Indian Railways Act (IX of 1890), s 59—Negligence—The legal obligation upon a Railway Company to exercise due care and skill in carrying passengers does not extend so far that the Company can be held responsible, under all circumstances, for not carrying them safely. Negligence alleged against them must be proved affirmatively, where denied. It was not the duty of the railway servants to search every parcel that passed the ticket barrier, carried by a passenger. Words in* *Chief Justice Q. B. in Collett v. Com. Co.,* *neglect* *had been proved against the Company or their servants, the decrees below were recommended for reversal, and the suit for dismissal. EAST INDIAN RAILWAY COMPANY v. KALIDAS MUKERJI (1901)*

[I. L. R., 28 Calc., 401;

S.C., 5 C. W. N., 449; I. L. R., 28 I. A., 144]

2. ——— *Act IX of 1890 (Indian*

3. ——— *Carriage of goods—Contract—Formation of contract—Rules of Company for consignment of goods—Re-booking of goods after arrival at original destination—Instructions to Station-master to re-book—The rules of a Railway Company prescribed certain procedure for the booking of goods. In accordance with those rules, certain goods were booked from Trichinopoly to Bagalkot. The plaintiff requested A, the goods clerk and Station-master at Hotgi (on defendants' railway), to have the goods re-booked from Bagalkot to Hotgi, and for this purpose handed him the rail-*

RAILWAY COMPANY—continued.

way receipt, with a written application, which, however, was not in the form of consignment used by the Company. A accordingly sent a service telegram to Bagalkot asking him to

Company had not contracted with the plaintiff to carry the goods from Bagalkot to Hotgi. The mere fact that the plaintiff got A, the Station-master at Hotgi, to send a service telegram to Bagalkot did not constitute a contract to bind the Company. *MALKARJUN SHIDAPA v. SOUTHERN MARATHA RAILWAY COMPANY (1902)*

I. L. R., 27 Bom., 126

4. ——— *Negligence in construction*
of a railway line—Injury to land by causing

possible in the exercise of such powers. The injunction should be in general terms, restraining the defendants from flooding, and should not direct the execution of specified works. *Lawrence v. Great Northern Railway Company (1851), 16 Q. B., 643; Broadbent v. Imperial Gas Company (1857), 7 De G. M. & G., 436; Bagnall v. London & North Western Railway Company (1861), 7 H.*

[I. L. R., 20 A., 100;
7 C. W. N., 393]

5. ——— *Consignment of goods—Diversion of consignment while en route—Delivery to the original consignee—Liability of the Railway Company—Railways Act (IX of 1890), s. 77—Notice—Second appeal—Plea of want of notice, whether allowable—Practice—G booked a consignment of goods from the Sakrigali Ghat Station*

RAILWAY COMPANY—concluded.

on the East Indian Railway to R at Kamptee, a station on the Bengal-Nagpur Railway. Whilst the consignment was en route to Kamptee, W directed the railway servants at Sakrigali Ghat Station to notify to the Station-master at Kamptee to deliver the consignment to plaintiff at Nargaon. This direction was given; but, disregarding the order, the Station-master at Kamptee delivered the consignment to R at Kamptee. The plaintiff sued the East Indian Railway to recover compensation for loss of goods. *Held* that the Railway Company was liable in damages; the case was a simple case of breach of contract; the defendant contracted to carry the goods and deliver them at Nargaon to the plaintiff, and failed to do so. *Held, further*, that the liability of the Railway Company was not affected by the fact that at Station master of Kamptee order

action arose. **CHHAOGANLAL SHALIGRAM SHET V. EAST INDIAN RAILWAY COMPANY (1903)**

[I. L. R., 27 Bom., 597]

RAILWAY SERVANTS.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY

[I. L. R., 30 Calc., 713]

RAILWAYS ACT (IX OF 1890).

— ss. 7 to 12—

See RAILWAY COMPANY.

[I. L. R., 27 Bom., 344]

— ss. 7, 10 and 11—

See RAILWAY COMPANY

— s. 47—

See RAILWAY COMPANY

[I. L. R., 23 All., 367]

RAILWAYS ACT (IX OF 1890)—continued.

— s. 59—

See RAILWAY COMPANY—LIABILITY OF COMPANY. I. L. R., 28 Calc., 401

— s. 72—

— *Risk Note, Form B—Indian Contract Act (IX of 1872), ss. 151, 152, 151—Railway Company*
— *Goods, loss of—Baillee—Suit for compensation.*
— A special agreement, known as "Risk Note, Form B," sanctioned by the Governor General in Council under s. 72, cl. (2), of the Indian Railways Act, absolves a Railway Company from all liability for loss of goods from any cause whatsoever. The Company, in such a case, is not a baillee under the Indian Contract Act. **TOONTA RAM V. EAST INDIAN RAILWAY COMPANY (1902)**

[I. L. R., 30 Calc., 357;
s.c., 7 C. W. N., 870]

— s. 77—

See RAILWAY COMPANY.

[I. L. R., 27 Bom., 597]

— ss. 77 and 140—

— *Claim against Railway Company—Notice of claim.*—The plaintiff sued the Bombay, Baroda and Central India Railway Company and the East Indian Railway Company for damages caused by the loss of goods.

merits, the suit was dismissed as against the Bombay, Baroda and Central India Railway Company, but a decree was passed against the East Indian Railway Company for Rs. 617. It appeared that no notice of plaintiff's claim under a 140 of the Indian Railways Act (IX of 1890) had ever been directly

once informed the East Indian Railway Company of the plaintiff's claim, and had given notice that, in case the plaintiff sued them, they would expect the East Indian Railway Company to bear all the expenses. Further correspondence took place between the two Companies with reference to the plaintiff's claim, and, on the 31st October, 1898, the Solicitors of the East Indian Railway Company wrote to the plaintiff's Solicitors as follows: "DEAR SIRS,—Your letter of the 21st instant, to the address of the General Traffic Manager, Bombay, Baroda and Central India Railway, Bombay, has been handed to us by our clients, the East Indian Railway, Calcutta, claiming on behalf of your clients a sum of Rs. 7,437, being the amount of loss alleged to have been sustained in respect of short delivery of 500 and 125 bags of wheat. The file of papers has just been handed to us, and we will write to you further as soon as we have had an opportunity of going through

RAILWAYS ACT (IX OF 1880)—concluded.

— ss. 77 and 140—concluded.

same Yours faithfully, (Signed) MORGAN & Co^{rs}INDIAN RAILWAY COMPANY v. JITHMULL BAKA-
NAND (1902) . I. L. R., 26 Bom., 689

— s. 128—

See JOINDER OF CHARGES.

[I. L. R., 29 Cal., 385]

— s. 140—

See ante, ss. 77 AND 140.

RAIYAT.

See BENGAL TENANCY ACT.

See ENHANCEMENT OF RENT.

See LANDLORD AND TENANT.

See RIGHT OF OCCUPANCY.

— and tenure-holder; distinction
between—See BENGAL CESS ACT, s. 4
[5 C. W. N., 535]

— interest of—

See MORTGAGE - REDEMPTION—RIGHT OF
REDEMPTION . . . 5 C. W. N., 83— non-occupancy; suit by, for recovery
of possession—See LIMITATION ACT, 1877, SCH. II, ART. 3
[7 C. W. N., 218]**RAJ, SUCCESSION TO.**

See HINDU LAW—

CUSTOM—

IMPARTIBILITY;

PRIMOGENITURE

[I. L. R., 29 Cal., 343]

INHERITANCE—IMPARTIBLE PRO-
PERTY.**RAPE.**

See ADULTERY . I. L. R., 29 Cal., 415

RASH AND NEGLIGENT ACT.—Penal Code (Act XLV of 1860), s. 336—Rash
and negligent act likely to endanger human life
or personal safety of others—Swinging by hooks**RATIFICATION.**See HINDU LAW—ALIENATION—ALIENA-
TION BY WIDOW—ALIENATION FOR
LEGAL NECESSITY OR WITH CONSENT OF
HEIRS OR REVERSIONERS.

[8 C. W. N., 905]

See PRINCIPAL AND AGENT—RATIFICA-
TION.

— of lease—

See LANDLORD AND TENANT—NATURE OF
TENANCY . I. L. R., 27 Bom., 515**REASONABLE AND PROBABLE
CAUSE.**

See MALICIOUS PROSECUTION.

RECEIPT.See STAMP ACT (II OF 1809), ss. 85 AND
42 . . . I. L. R., 24 All., 374— of rent from various tenants, for one
holding—See BENGAL TENANCY ACT, s. 88.
[8 C. W. N., 823]**RECEIVER.**See INSOLVENCY—INSOLVENT DEBTORS
UNDER CIVIL PROCEDURE CODE.

[5 C. W. N., 91]

See LETTERS PATENT, HIGH COURTS,
1885, CL. 15 . I. L. R., 21 Mad., 511See PARTIES—PARTIES TO SUITS—
RECEIVER.See PLAINT—AMENDMENT OF PLAINT,
[I. L. R., 30 Cal., 609]— appointed under Land Registration
Act (Ben. Act VII of 1870)—See PUBLIC SERVANT.
[I. L. R., 20 Cal., 225]

— sale by—

See SALE IN EXECUTION OF DECREE—
MORTGAGED PROPERTY.

[5 C. W. N., 403]

RECEIVER—continued.

1.—Accounts—*Exceptions to accounts—Mofussil accounts—Receiver, liability of—Procedure—Practice—Costs—Civil Procedure Code (Act XIX of 1852), s. 503.*—A Receiver is responsible for all properties which come into his custody or manage-

involves the inquiry whether all his collections, made on behalf of the property of which he is the Receiver, are duly entered in the accounts and, next, whether all his disbursements are payments properly made in respect of that property. A Receiver's liability is not restricted to matters shown upon his accounts. If there is any liability attaching to the Receiver, other than that which appears on the face of the accounts, the proper course is to sue the Receiver for the purpose of establishing that liability. Questions with regard to the soundness or prudence of the system of management adopted by a Receiver, or charges of wilful default or neglect, are not matters that can be disposed of in the shape of exceptions to accounts. Even where a *prima facie* case of the responsibility of the Receiver for malpractices of his servants is made out, an inquiry into such practices is foreign to an application to pass Receiver's accounts. The objection that a Receiver has not included in his accounts collections made in the mofussil, cannot be dealt with upon an application to pass his accounts. If a *prima facie* ground is made out of the accountability of the Receiver for the mofussil collections, the proper course is either to postpone the passing of the accounts until the question of the Receiver's liability is established by suit, or to pass the accounts, reserving the right of the parties to establish any claim they may make against the Receiver in a suit properly framed for the purpose. *SATTYA SANKAR GHOSAL v. GOLAPMOHON DEBBI* (1900)

[5 C. W. N., 223]

2.—Appointment—*Title to property—Removal of property*—In an application for the

give rise to suspicion, during the pendency of a suit in which the question of title to that property is to be determined, is in itself a sufficient ground for the appointment of a Receiver. *SHAM CHAND GRIH v. BHAYA RAM PANDAY* (1894)

[5 C. W. N., 365]

3.—*Waste*—The suit relates to a certain *mohurshap* which became vacant by the death of one J, the former *mohant*, who died on the 8th September, 1899. A, who was the plaintiff, and the nephew of the deceased, alleged that he was installed as *mohant* on the 2nd September; S, the defendant, who was in possession, alleged that he

RECEIVER—continued.

was installed as *mohant* on the 12th September by a *punchayet*. Plaintiff applied for appointment of a Receiver; and, in support of his allegation as to his installation, he relied upon a considerable number of affidavits of most respectable witnesses. It was admitted that S was installed as *mohant* as alleged. There was great reason to believe that since he took possession of the property he had committed gross waste. *Held*, in the circumstances, that it was a fit case in which a Receiver should be appointed. In an application for the appointment of a Receiver in a suit where the title to certain properties, in the possession of the defendant, is in dispute, it is not necessary that a strong case should be made out; it is sufficient if a fair *prima facie* case is made out. *Siddhewari Debi v. Abhogeswari Debi* (1858), I. L. R., 13 Cal., 818; *Chandidat Jha v. Padmanand Singh* (1895), I. L. R., 20 Cal., 459; *Sham Chand Givir. Bhaya Ram Pandey* (1894), 5 C. W. N., 365, referred to. *MOHANT SHAM DAS v. MOHANT MOHAR DAS* (1893) 5 C. W. N., 363

4.—*Practice—Application for appointment of Receiver, whether to be made in Chambers or in Court*—An application for the appointment of a Receiver on the retirement of another Receiver should be made in Court, and not in Chambers. *STALKART v. STALKART* (1900)

[I. L. R., 28 Cal., 250]

5.—*Civil Procedure Code (Act XIX of 1852), s. 503—Appointment of Receiver in a mortgage suit*—A Receiver can be appointed under a 503 of the Civil Procedure Code in a suit to enforce a mortgage. *Ponda Khanum v. Rajroop Koer* (1877), I. L. R., 3 Cal., 835, explained. *GHANASYAM MISSEH v. GORINDA MOHT DAS* (1903) 7 C. W. N., 482

6.—*Contempt—Contempt proceedings—Appeal—Receiver appointed pending appeal—Appeal no longer pending—Discharge of Receiver—Jurisdiction of Court*—There is nothing to prevent the Receiver of a property appointed by the Court from himself applying for taking proceedings

When a Receiver of

passed by it. *GRIH v. WOODRAMOHUN THAKUR* (1901) I. L. R., 28 Cal., 790

7.—*Debt incurred by Receiver—Creditor, right of suit by—Estate, liability of—Receiver, personal liability of—Executor or Trustee, nature of liability of*—A creditor is entitled to proceed against the representative of an estate for recovery of debt incurred by the Receiver during the management of the estate by him; the right to maintain such suit against the representative is founded on the just and equitable

RECOGNIZANCE TO KEEP PEACE—
*concluded.***3. LIKELIHOOD OF BREACH OF PEACE.**

7.—Criminal Procedure Code (Act V of 1899), ss. 107, 145—Dispute relating to possession—Propriety of instituting proceedings for taking security—Findings justifying order for security—Issue raised, as in a case under s. 145—Order

Per BANERJEE, J.—The mere fact of a dispute likely to lead to a breach of the peace being a dispute relating to the possession of land may not be sufficient to preclude the Magistrate from taking

relates to possession of land. KING-EMPEROR v. BASTARUDDIN MOLLAH (1903) . 7 C. W. N., 746

4. CANCELLING ORDER.

8.—Order for keeping the peace on conviction—Appeal—Appellate Court, power of, to set aside such order—Criminal Procedure Code (Act V of 1899), ss. 106 and 428, cl. (d)—An order in appeal, setting aside an order of the first Court made under

RECORD.

See EVIDENCE—CRIMINAL CASES—POLICE EVIDENCE, DIARIES, PAPERS AND REPORTS . I. L. R., 28 Calc., 348

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—STRIKING OFF PROCEEDINGS . 6 C. W. N., 923

—disallowance of cost of printing—

See PRIVY COUNCIL, PRACTICE OF—COSTS. [I. L. R., 29 I. A., 166

—of statement made by dying person—

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See INFORMATION OF COMMISSION OF OFFENCE . 6 C. W. N., 921

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RECORD-OF-RIGHTS.

See BENGAL TENANCY ACT—

ss. 101 to 111A;

[I. L. R., 28 Calc., 28

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[I. L. R., 30 Calc., 338

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7 C. W. N., 400

See RENT, SUIT FOR . 6 C. W. N., 914

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS . 11 C. W. N., 798

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See EQUITY OF REDEMPTION.

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See MORTGAGE—

CONSTRUCTION;

[I. L. R., 26 Bom., 352

POSSESSION UNDER MORTGAGE;

[I. L. R., 25 All., 287

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[5 C. W. N., 423

See REGISTRATION ACT (III of 1877),

s. 17, CLS. (b) AND (d).

[I. L. R., 30 Calc., 1018

See RES JUDICATA—MATTERS IN ISSUE.

[I. L. R., 25 Bom., 115

REFERENCE TO FULL BENCH.

—Power of Judge of High Court presiding at the Criminal Sessions to refer to Full Bench point raised by accused before he is called upon to plead

—Letters Patent, High Courts, 1865, cl. 25—Where a point is raised on behalf of the accused before he is called upon to plead, the Judge presiding at the Sessions has no power, under the Charter, to refer the matter to a Full Bench. QUEEN-EMPEROR v. DOUGHERTY DASS (1900) . I. L. R., 28 Calc., 311; (a.c., 5 C. W. N., 169

REFERENCE TO HIGH COURT—CIVIL CASES.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT.

RECOGNIZANCE TO KEEP PEACE.

Col.

1. MAGISTRATE WITH POWERS OF APPELLATE COURT 919
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See TRANSFER OF CRIMINAL CASE—GENERAL CASES . I. L. R., 24 All., 151

1. MAGISTRATE WITH POWERS OF APPELLATE COURT.

1.—Order—Omission of express finding as to commission of offence within the section—Illegality—Jurisdiction—Criminal Procedure Code (Act V of 1898), ss. 106 and 423—Penal Code (Act XLV of 1860), s. 879.—Where a Subordinate Magistrate convicted the prisoner, under s. 379 of the Penal Code, of theft, and the District Magistrate on appeal merely affirmed the conviction and added to his judgment an order under s. 106 of the Criminal Procedure Code binding over the petitioner to keep the peace: Held that he was not competent to pass such an order, except on an express finding that the petitioner had committed an offence within the terms of s. 106. KINOO SNEHEN & DARRATULLAH MOHAMMAD (1902)

[I. L. R., 29 Calc., 393;
s.c., 6 C. W. N., 678

2. WHEN RECOGNIZANCE MAY BE TAKEN.

2.—Criminal Procedure Code, s. 106—Binding

so far. SEIHANI SHOME & LAL KHAN (1900)
[5 C. W. N., 250

3.—Security for keeping the peace on conviction, order for—Offences not within the terms

RECOGNIZANCE TO KEEP PEACE—continued.

2. WHEN RECOGNIZANCE MAY BE TAKEN—continued.

Criminal Procedure Code, it is incumbent upon the Magistrate to record a clear finding with respect to the facts which in his opinion make the provisions of that section applicable. Jib Lal Gird v. Jyomohan Gird (1922), I. L. R., 26 Calc., 576, followed. RAIDYA NATH MAJUMDAR & NIBARAN CHUNDER GORF (1902) I. L. R., 30 Calc., 83; [s.c., 6 C. W. N., 471

4.—Criminal Procedure Code (Act V of 1898), s. 106, order under, when proper—House-trespass—Breach of peace—Penal Code, s. 449—An order under s. 106, Code of Criminal Procedure, can be

gished. Queen v. Gendoo Khan (1867), 11 W. R., Cr. R., 14, and Queen v. Jhapoo (1873), 20 W. R., Cr. R., 37, referred to. TALUK CHARN MUNDLE v. GOVINDKANT BISWAS (1902) . 7 C. W. N., 26

5.—Criminal Procedure Code (Act V of 1898), ss. 107, 118—Security for keeping the peace,

Criminal Procedure Code, stated that the persons bound over had used their influence for the purpose of stopping the services of the village barber, washerman and others from being rendered to complainant, and also, generally, that they had committed "diverse other acts of oppression." Held that the former statement was not enough to justify an order under s. 118, Code of Criminal Procedure, and the latter was by itself too vague to sustain the order. JINPAT CROWDER & RUSSEN (1902)

[7 C. W. N., 32

order requiring them to give security for keeping the peace must be set aside, as none of the offences for which they had been convicted necessarily involved a breach of the peace. Whether such an order might be made in a case in which a person is not accused of an offence involving a breach of the peace, but there is nevertheless an express finding that a breach has been committed—Quare. KANKOOKARAN KUNHAMAD & EMPHROB (1902)

I. L. R., 26 Mad., 469

REFERENCE TO HIGH COURT— CIVIL CASES—concluded.

See STAMP ACT (II of 1899)—

ss. 32 AND 57;

[I. L. R., 25 Mad., 751

ss. 57. I. L. R., 25 Mad., 753

1.—Refusal to interfere—Practice—Pro-

the opponent, appeared before the District Judge, claiming to be the owner of the village in which the lands were situate, and contended that the lands did not belong to the mosque and that the applicant was not the manager. The District Judge felt a doubt as to whether he had jurisdiction to entertain the application unless a suit was properly framed and filed under s. 559 of the Civil Procedure Code (Act XIV of 1874), and referred the point to the High Court under s. 617 of the Code. The High Court refused to answer the reference, being of opinion that no reference under s. 617 could be made on such an application. *Ss. 17 and 61 of the Civil Procedure Code apply when doubts arise in the proceeding of a suit or appeal or execution or other proceeding. s. 617 was not intended to provide for suppositious cases which do not naturally arise in a proper proceeding before the Court.* *MAYAMAD HAJI ZAKERIA v. AHMADBRAT H. BISHWAI (1900)* . I. L. R., 25 Bom., 327

2.—Civil Procedure Code,

s. 646B—Small Cause Court—Jurisdiction—Question of jurisdiction not raised in the Court of Small Causes—Reference by District Judge under s. 646B declined—S. 646B of the Code of Civil Procedure does not apply to every case in which a Court of Small Causes has failed to exercise a jurisdiction vested in it by law, or has by law, but of such cases, Small Causes or not to be, on as to the either party, and the Court of Small Causes proceeded to judgment as if the case was properly cognizable by it, the High Court refused to interfere upon a reference by the District Judge purporting to be made under s. 646B of the Code of Civil Procedure. *RAM LAL v. KABUL SINGH (1902)*

[I. L. R., 25 All., 135

REFERENCE TO HIGH COURT— CRIMINAL CASES.

See CALCUTTA MUNICIPAL ACT, 1899,
s. 443 . . . 7 C. W. N., 564

See HABYAS CORPUS, WRIT OF.

[I. L. R., 20 Calc., 286

REFERENCE TO HIGH COURT— CRIMINAL CASES—continued.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION . 5 C. W. N., 71

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[I. L. R., 29 Calc., 128

1.—Acquittal—Practice—Reference to High Court from verdict of acquittal, when not proper—Making up of records, defect in—Penal Code (Act XLV of 1860), ss. 116, 161, 466.—Where, on the Sessions Judge's own showing in his charge to the jury, the evidence for the prosecution was so open to hostile criticism as to justify the jury in regarding it with suspicion: Held that the Sessions Judge was not justified in making a reference, under s. 307, Code of Criminal Procedure, against a verdict of acquittal delivered upon such evidence. *KING-EMPEROR v. CHIDOHAN GOSSAIN (1902)* . . . 7 C. W. N., 135

2.—Criminal Procedure Code, ss. 435, 439, 439—Practice—Revision—Reference by District Magistrate recommending the reconsideration of an order of acquittal passed by a Subordinate Magistrate.—In the case of an acquittal by a Subordinate Magistrate, where the Local Government does not appeal, or where the District Magistrate does not move the Local Government to appeal, the High Court will not, as a general rule, entertain a reference direct from the District Magistrate under s. 438 of the Code of Criminal Procedure. *IN THE MATTER OF AMIN-UD-DIN (1902)*

[I. L. R., 24 All., 346

3.—Criminal Procedure Code, s. 438—Revision—Practice—Reference by District Magistrate questioning an order of acquittal.—The High Court will not ordinarily entertain a reference under s. 438 of the Code of Criminal Procedure, the object of which is to have an order of acquittal passed by an inferior Court set aside. *EMPEROR v. MADAR BAKSH (1902)*

[I. L. R., 25 All., 128

4.—Duty of Sessions Judge—Reference under s. 307, Criminal Procedure Code—Duty of the Sessions Judge in making a reference.—Where a Sessions Judge, in his reference to the High

description it is the duty of the Sessions Judge to set out on what portions of the evidence or on what facts disclosed by the evidence the accused should have been convicted. *KING-EMPEROR v. BHUT NATH GHOSH (1902)* . 7 C. W. N., 345

5.—Security for good behaviour—Criminal Procedure Code, s. 118—Security for good behaviour—Discretion of Court—Security demanded not to be excessive—Where a Magistrate, acting under s. 118 of the Code of Criminal Procedure, required securities to an

REFERENCE TO HIGH COURT— CRIMINAL CASES—concluded.

amount which the person to be bound over was totally unable to furnish, in consequence of which he remained in jail for some two months and a half, the Court held that the Magistrate had not exercised a proper discretion in the matter, and reduced the amount of the security. *Queen-Empress v. Rama* (1892). *I L R.*, 16 Bom. 372, followed. *Queen-Empress v. Raza Ali* (1900)

[*I. L. R.*, 23 All. 80

REFORMATORY SCHOOLS ACT (VIII OF 1897).

—ss. 8, 9, 11, 13 and 16—

—*Youthful offenders—Periods of detention allowable under the Act—Finding by Magistrate as to age—Form of order—Exact period of*

five years, unless he should attain the age of eighteen years at an earlier date. Held that the order was wrong, inasmuch as it failed to fix the exact period of detention. *Sembi* that in some cases it may not be necessary to ascertain the exact age of the offender. If he be not over fifteen, a period of three years may rightly be fixed; if not over eleven, a period of seven years may be fixed without further inquiry. But, in cases in which inquiry is necessary in order to fix the period, as when the

question to the reformatory officials. The effect of the notification published by Government, regulating the periods for which youthful offenders may be sent to reformatory schools in the Madras Presidency, is to fix a minimum period of five years for all cases in which such a period is legally possible; namely, in all cases where the offender is not over thirteen at the date of conviction. It was not intended to prevent the Magistrate from fixing a period short of five years, but not short of three years, in the case of a boy over thirteen. *Queen-Empress v. Rama* (1900)

[*I. L. R.*, 24 Mad. 13

—ss. 8, 9 and 16—

Penal Code (Act XLV of 1860), s. 379—Theft—Code of Criminal Procedure (Act V of 1898), s. 439—High Court, power of revision of—Order for detention of youthful offender in reformatory school without passing sentence, legality of—Jurisdiction of High Court to consider legality or propriety of conviction, sentence or order, if affected by s. 16, Reformatory Schools Act—Limitation of power—S 16 of the Reformatory Schools Act (VIII of

REFORMATORY SCHOOLS ACT (VIII OF 1897)—concluded.

—ss. 8, 9 and 16—concluded.

1897) does not affect the jurisdiction of the High Court, as a Court of revision, to consider the legality or propriety of the conviction or sentence or of

the first instance, sentence the accused to a term of imprisonment or transportation, which he may then commute into one of detention in a reformatory school for such period as the law prescribes. An order for the detention of a youthful offender in a reformatory school, when no sentence of imprisonment or of transportation has been passed, is bad in law. *Radha Krishna Barai v. Gokula Nair* (1901) . . . 5 C. W. N., 210

—ss. 8 and 16—

—*Jurisdiction—Reformatory school—Detention in, in lieu of sentence of imprisonment—Power of High Court to alter or set aside such sentence—S 16 of the Reformatory Schools Act does not in any way take away the jurisdiction of the High Court to alter or set aside the sentence, in substitution of which an order for detention is made. The power of the High Court remains intact, to consider the propriety or legality of any sentence passed upon a youthful offender. *Rasput v. Court-Ner* (1900) . . . *I. L. R.*, 28 Calc., 423; [*s.c.*, 5 C. W. N., 211*

—s. 9—

See ante—

ss. 8, 9, 11, 13 and 16;

ss. 8, 9 and 16.

—ss. 11 and 13—

See ante, ss. 8, 9, 11, 13 and 16.

—s. 16—

See ante—

ss. 8, 9, 11, 13, 16;

ss. 8, 9 and 16;

ss. 8 and 16.

REFUSAL TO REGISTER.

See FALSE EVIDENCE—GENERAL CASES.

[*C. W. N.*, 44

See REGISTRATION ACT (III of 1877)—

ss. 73 to 77;

[*I. L. R.*, 24 All. 402

s. 77 . . . *I. L. R.*, 30 Calc., 633

REGISTRAR OF DOCUMENTS.

See REGISTRATION ACT (III of 1877).

ss. 32, 34 and 87; 5 C. W. N., 177

REFERENCE TO HIGH COURT— CIVIL CASES—concluded.

See STAMP ACT (II OF 1899)—

ss. 32 and 57;

[I. L. R., 25 Mad., 751

ss 57 . I. L. R., 25 Mad., 752

1.—Refusal to interfere—Practice—Procedure—Civil Procedure Code (Act XIV of 1882), ss. 539, 617, 647.—M, claiming to be a trustee or manager of a mosque, applied to the District Judge for permission to grant a lease of lands belonging to the mosque. In response to a proclamation issued, A, the opponent, appeared before the District Judge, claiming to be the owner of the village in which the lands were situate, and contended that the lands did not belong to the mosque and that the applicant was not the manager. The District Judge felt a doubt as to whether he had jurisdiction to entertain the application unless a suit was properly framed and filed under s. 539 of the Civil Procedure Code (Act XIV of 1882), and referred the point to the High Court under s. 617 of the Code. The High Court refused to answer the reference, being of opinion that no reference under s. 617 could be made on such an application. Ss. 17 and 64 of the Civil Procedure Code apply when doubts arise in the proceeding of a suit or appeal or execution or other proceeding. S. 617 was not intended to provide for suppositious cases which do not naturally arise in a proper proceeding before the Court. MAHAMAD HAJI ZAKERIA v. AHMADABAI HABIB-BAI (1900) . . . I. L. R., 25 Bom., 327

2.—Civil Procedure Code, s. 646B—Small Cause Court—Jurisdiction—Question of jurisdiction not raised in the Court of Small Causes—Reference by District Judge under s. 646B declined.—S. 646B of the Code of Civil Procedure does not apply to every case in which a Court of Small Causes has failed to do so by law, but by law, but of such cases, Small Causes or not to be, on as to the either party, and the Court of Small Causes proceeded to judgment as if the case was properly cognizable by it, the High Court refused to interfere upon a reference by the District Judge purporting to be made under s. 646B of the Code of Civil Procedure. RAM LAL v. KANUL SINGH (1902)

[I. L. R., 25 All., 135

REFERENCE TO HIGH COURT— CRIMINAL CASES.

See CALCUTTA MUNICIPAL ACT, 1890, s. 449 . . . 7 C. W. N., 554

See HANNAH COMPANIES, WRIT OF.

[I. L. R., 29 Calc., 286

REFERENCE TO HIGH COURT— CRIMINAL CASES—continued.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION . . . 5 C. W. N., 71

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[I. L. R., 29 Calc., 128

1.—Acquittal—Practice—Reference to High Court from verdict of acquittal, when not proper—Making up of records, defect in—Penal Code (Act XLV of 1860), ss. 116, 161, 466.—Where, on the Sessions Judge's own showing in his charge to the jury, the evidence for the prosecution was so open to hostile criticism as to justify the jury in regarding it with suspicion: Held that the Sessions Judge was not justified in making a reference, under s. 307, Code of Criminal Procedure, against a verdict of acquittal delivered upon such evidence. KING-EMPEROR v. CHIDDHAN GOSSAIN (1902) . . . 7 C. W. N., 135

2.—Criminal Procedure Code, ss. 435, 438, 439—Practice—Revision—Reference by District Magistrate recommending the reconsideration of an order of acquittal passed by a Subordinate Magistrate.—In the case of an acquittal by a Subordinate Magistrate, where the Local Government does not appeal, or where the District Magistrate does not move the Local Government to appeal, the High Court will not, as a general rule, entertain a reference direct from the District Magistrate under s. 438 of the Code of Criminal Procedure. IN THE MATTER OF AMIN-UD-DIN (1902)

[I. L. R., 24 All., 346

3.—Criminal Procedure Code, s. 439—Revision—Practice—Reference by District Magistrate questioning an order of acquittal.—The High Court will not ordinarily entertain a reference under s. 438 of the Code of Criminal Procedure, the object of which is to have an order of acquittal passed by an inferior Court set aside. EMPEROR v. MADAN BAKSHI (1902)

[I. L. R., 25 All., 128

4.—Duty of Sessions Judge—Reference under s. 307, Criminal Procedure Code—Duty of the Sessions Judge in making a reference.—Where a Sessions Judge, in his reference to the High Court, merely describes the evidence, and does not state the facts, the High Court will not set aside the verdict of the jury. KING-EMPEROR v. BRUT NATH GHOSH (1902) . . . 7 C. W. N., 345

5.—Security for good behaviour—Criminal Procedure Code, s. 118—Security for good behaviour—Discretion of Court—Security demanded not to be excessive.—Where a Magistrate, acting under s. 118 of the Code of Criminal Procedure, required securities to an

description it is the duty of the Sessions Judge to set out on what portions of the evidence or on what facts disclosed by the evidence the accused should have been convicted. KING-EMPEROR v. BRUT NATH GHOSH (1902) . . . 7 C. W. N., 345

5.—Security for good behaviour—Criminal Procedure Code, s. 118—Security for good behaviour—Discretion of Court—Security demanded not to be excessive.—Where a Magistrate, acting under s. 118 of the Code of Criminal Procedure, required securities to an

REFERENCE TO HIGH COURT— CRIMINAL CASES—concluded.

amount which the person to be bound over was totally unable to furnish, in consequence of which he remained in jail for some two months and a half, the Court held that the Magistrate had not exercised a proper discretion in the matter, and reduced the amount of the security. *Queen-Empress v Rama* (1892). 1 L. R., 16 Bom., 372, followed. *Queen-Empress v Raza Ali* (1900)

[I. L. R., 23 All., 80

REFORMATORY SCHOOLS ACT (VIII OF 1897).

—ss. 8, 9, 11, 13 and 16—

—*Youthful offenders—Periods of detention allowable under the Act—Finding by Magistrate as to age—Form of order—Exact period of detention*—A District Magistrate before whom the case of a youthful offender came, under the provisions of s. 9 of the Reformatory Schools Act, 1897, found

five years, unless he should attain the age of eighteen years at an earlier date. Held that the order was wrong, inasmuch as it failed to fix the exact period of detention. *Semble*, that in some cases it may not be necessary to ascertain the exact age of the offender. If he be not over fifteen, a period of three years may rightly be fixed; if not over eleven, a period of seven years may be fixed without further inquiry. But, in cases in which inquiry is necessary in order to fix the period, as when the

question to the reformatory officials. The effect of the notification published by Government, regulating the periods for which youthful offenders may be sent to reformatory schools in the Madras Presidency, is to fix a minimum period of five years for all cases in which such a period is legally possible; namely, in all cases where the offender is not over thirteen at the date of conviction. It was not intended to prevent the Magistrate from fixing a period short of five years, but not short of three years, in the case of a boy over thirteen. *Queen-Empress v Rama* (1900)

[I. L. R., 34 Mad., 13

—ss. 8, 9 and 16—

Penal Code (Act XLV of 1860), s. 379—Theft—Code of Criminal Procedure (Act V of 1898), s. 439—High Court, power of revision of—Order for detention of youthful offender in reformatory school without passing sentence, legality of—Jurisdiction of High Court to consider legality or propriety of conviction, sentence or order, if effected by s. 16, Reformatory Schools Act—Limitation of power—S. 18 of the Reformatory Schools Act (VIII of

REFORMATORY SCHOOLS ACT (VIII OF 1897)—concluded.

—ss. 8, 9 and 16—concluded.

tory school for such period as the law prescribes. An order for the detention of a youthful offender in a reformatory school, when no sentence of imprisonment or of transportation has been passed, is bad in law. *Radha Kristo Barai v Gokula Nair* (1901). 5 C. W. N., 210

—ss. 8 and 16—

—*Jurisdiction—Reformatory school—Detention in, in lieu of sentence of imprisonment—Power of High Court to alter or set aside such sentence*—S. 16 of the Reformatory Schools Act does not in any way take away the jurisdiction of the High Court to alter or set aside the sentence, in substitution of which an order for detention is

—s. 9—

See ante—

ss. 8, 9, 11, 13 and 16;

ss. 8, 9 and 16.

—ss. 11 and 13—

See ante, ss. 8, 9, 11, 13 and 16.

—s. 16—

See ante—

ss. 8, 9, 11, &c.;

ss. 8, 9 and 16;

ss. 8 and 16.

REFUSAL TO REGISTER.

See FALSE EVIDENCE—GENERAL CASES.

[5 C. W. N., 44

See REGISTRATION ACT (III of 1877)—

ss. 73 to 77;

[I. L. R., 34 All., 403

s. 77. I. L. R., 30 Calc., 532

REGISTRAR OF DOCUMENTS.

See REGISTRATION ACT (III of 1877).

ss. 32, 34 and 57; 5 C. W. N., 177

REGISTRAR OF HIGH COURT.

—reference to—

See DIVORCE ACT, s. 36 . ■ C. W. N., 414

—report of—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTIONS OF LAW—REGISTRAR'S REPORT.

See PRACTICE—CIVIL CASES—REPORT OF REGISTRAR.

—sale by—

See PRACTICE—CIVIL CASES—SALE BY REGISTRAR.

—Sale by Registrar—*Dwelling-house—Conditions of sale—Title, abstract of, mis-statement in—Acceptance of title by purchaser—Payment into Court of balance—Subsequent discovery of mis-statement—Sale, rescission of—Compensation.*—A purchaser of a dwelling-house at a Registrar's sale accepted the conditions of sale, whereby he was required to furnish requisitions and objections, if any, within a fortnight after delivery of the abstract (and in this respect time was of the essence of the contract), and he was not entitled to call for any other documents except those abstracted, or for the originals of documents which he had.

title as shown in the abstract, and paid the balance of the purchase-money into Court, without reserving any right to object to the title. He now applied to be discharged from such purchase, and for leave to withdraw the purchase-money from Court, on the ground that he had subsequently discovered that only an eight-twelfth share of the house had been sold to him, and that he had been misled in the purchase by misrepresentation contained in the conditions of sale and the abstract of title. *Held* that, although there was no fraud on the part of the vendor, he knew as he had the means of knowing that

enforce the contract or rescind the sale. It is different in the case of land, occupied for agricultural or such like purposes, where there is a deficiency in area. Ordered that it be referred to the Registrar to inquire and report whether a title can be made to the property by the vendor. Further hearing adjourned until the return of the report. *UPENDRA NATH MITTAR v. OMOY KALI DASGI* (1901)

[6 C. W. N., 593]

REGISTRAR OF SMALL CAUSE COURT.

See SANCTION FOR PROSECUTION—

POWER TO GRANT SANCTION;

[I. L. R., 27 Bom., 130]

REVOCATION OF SANCTION.

[I. L. R., 27 Bom., 130]

REGISTRATION.

See DEED—EXECUTION.

[■ C. W. N., 329]

—effect of—

See PRINCIPAL AND AGENT—REVOCATION.

[I. L. R., 30 Calc., 285]

See REGISTRATION ACT, 1877—

ss. 49 AND 50;

s. 50;

s. 50 AND s. 17.

—non-validity of unregistered lease—

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

[7 C. W. N., 90]

—of land—

See LAND REGISTRATION ACT, 1876 (BEX. ACT VII OF 1876).

—suit to enforce—

See REGISTRATION ACT (III OF 1877), s. 77 . I. L. R., 30 Calc., 532

—whether it amounts to notice—

See TRANSFER OF PROPERTY ACT, s. 2—“NOTICE” . 7 C. W. N., 11

—Notice of prior incumbrances—*Transfer of Property Act (IV of 1882), s. 81—Marshalling of securities*—Registration of a sale or mortgage is in itself notice to subsequent purchasers or mortgagees. This doctrine is as applicable since the introduction of the Transfer of Property Act (IV of 1882) as it was before. *DINA v. NATHU* (1902)

[I. L. R., 28 Bom., 538]

REGISTRATION ACT (III OF 1877).

—s. 3—

See post, s. 28 . I. L. R., 25 Bom., 50

—s. 17—

See post, s. 28 . I. L. R., 29 Calc., 654

See post, ss. 50 AND 17.

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . I. L. R., 29 I. A., 138

See INSOLVENT ACT (11 & 12 VICT. c. 21), s. 23 . I. L. R., 25 Bom., 659

See LANDLORD AND TENANT—TRANSFER BY TENANT . 8 C. W. N., 618

1.—*Withdrawal petition setting out terms of compromise filed in Court but not registered—Subsequent suit for land referred to in the compromise—Necessity for registration.*—In 1893, plain-

a com-
wers to
sued for.

REGISTRATION ACT (III OF 1877)—

continued.

—s, 17—continued.

They then filed a petition in Court, setting out the agreement at which they had arrived, and asking that the suit might be withdrawn. The Court thereupon ordered the suit to be struck off the file, and made an order as to costs. The agreement was never registered. Plaintiff, relying on the agreement, sought to have it established and to recover

2.—Deed of gift of immovable property—
 made on 22.12.1941 after death of
 my registra-
 tive of
 nary registra-
 in lifetime

Mad. 673

(1003).

L. L. H. 50 1212, 103

4.—*Cla. (b) and (h)—Partnership—Deed of partnership—Clause giving one partner only a right of redemption of mortgaged property—Docu-*

tion under circumstances which are inadmissible in evidence

REGISTRATION ACT (III OF 1877)~

continued

—a. 17—concluded.

an indefinite period at an annual rent of \$100. The instrument was not registered. Plaintiff having fallen into arrears, plaintiff sued to recover the amount due, and to compel defendant to pay the same.

Act, and (2) that, assuming it to be an agricultural lease, its registration was compulsory under s. 17, cl. (d), of the Indian Registration Act, inasmuch as it was not a lease for a term not exceeding five years. On a petition being filed to revise the Municipal decree: *Held* (1) that a lease of land for the cultivation of *betel* is an agricultural lease. *Kunhayan Haji v. Mayan, I. L. R., 17 Mad. 94* not followed. (2) that, although the lease was

plaintiff was not precluded from proving the title by oral evidence or by proof of the unregistered instrument. *MURUGESA CHETTI v. CHINATHANAYAGOUNDAN* (1901) . . . I. L. R., 24 Mad., 421.

— 18 —

See post, § 28 . I. L. R., 20 Calr., 674

— 22 —

1.—Registration Act (III of 1877), ss. 3, 24,
64 and 65—Registration—Registration of a *donu*.

2.—Registration—Mortgage—Registration Act (III of 1877), ss. 17, 18, 28, 49—Registration of documents—Jurisdiction to register documents—

mortgage bond, the defendant contended, *inter alia*, that no such property as described in the deed ever existed; and, no satisfactory evidence having been given as to its existence: *Held* that the document

REGISTRATION ACT (III OF 1877)— continued.

— ss. 28—concluded.

could not take effect as a mortgage-bond; but, it being registered, the plaintiff's claim was not barred, though the suit was brought more than three years after the date of execution of the deed; and the plaintiff was entitled to a money-decree for the whole amount secured by the deed, with interest at the contract rate. *Baij Nath Tewari v. Shoo Sahay Bhagat* (1891), 1 L. R., 18 Calc., 556, and *Bewi Madhab Mittler v. Khatir Mondul* (1887), 1 L. R., 11 Calc., 449, relied upon. *Ram Coomaz Sen v. Khoda Nawaz* (1889), 7 C. L. R., 223, commented upon. *JOGESH MOHYN CHATTERJEE v. BHOOT NATH GHOSAL* (1902). 1 L. R., 29 Calc., 654; [s.c., 6 C. W. N., 856]

— ss. 32, 34 and 87—

—Registration after death of executant—Registration, jurisdiction of—Procedure, defect in—A Registrar has no power or jurisdiction to register a deed unless he is moved by some person entitled to

RAHIM (1900) . . . 5 C. W. N., 177;
[s.c., 1 L. R., 23 I. A., 15;
1 L. R., 23 All., 233]

— ss. 48—

See ante, s. 28. 1 L. R., 29 Calc., 654

See LANDLORD AND TENANT—NATURE OF
TENANCY. 1 L. R., 27 Bom., 615

— ss. 49 and 50—

—Registration—Priority—Unregistered deed accompanied with possession—Subsequent sale by registered deed—Effect of possession—Possession, for purposes of notice, equivalent to registration—Duty of purchaser to inquire as to nature of possession—On the 16th June, 1876, Revapurri mortgaged the lands in suit to the first defendant, with possession, and the latter, on the 26th June, 1876, leased them to the second defendant for one year. The second defendant remained in possession as tenant after the year had expired. On the 3rd December,

heir of Revapurri sold the equity of redemption in the mortgage of 1876, by a registered deed, to the plaintiff. At the date of this sale to the plaintiff the second defendant was still in actual possession. The

passed a decree for the plaintiff, holding that his registered deed gave him priority over the second

REGISTRATION ACT (III OF 1877)— continued.

— ss. 49 and 50—concluded.

defendant, whose deed was unregistered. On appeal: Held (reversing the decree of the lower Courts) that the plaintiff's suit should be dismissed. Possession, in certain cases, for the purposes of notice, has the same effect as registration. The plaintiff, at the date of his purchase, had notice of the possession of the second defendant, and, that being so, it was the plaintiff's duty to inquire of the second defendant under what title he held; and, if the plaintiff had done so, instead of assuming that the second defendant was still holding merely as tenant, he would have discovered that the second defendant had purchased the land. *KONDIBA BIN BABAJI v. NANA SHEDRAO* (1903) . . . 1 L. R., 27 Bom., 408

— ss. 50—

See ante, ss. 49 AND 50.

1.—Priority—Registered and unregistered documents—Purchaser under a registered deed, whether entitled to priority over purchaser in execution of a subsequent decree obtained by a prior mortgagee under an unregistered deed.—A purchaser of immovable property under a registered deed of sale is entitled to priority over a purchaser of the same property in execution of a subsequent decree obtained by a mortgagee under a prior unregistered deed. *Baijnath v. Lachman Das* (1883), 1 L. R., 7 All., 588, dissented from. *ISHAN CHANDRA DEY v. GOVESH CHANDRA PARI* (1900)

[1 L. R., 28 Calc., 189;
s.c., 5 C. W. N., 419]

2.—Document of which registration is optional—Priority of subsequent registered document over prior unregistered document—Notice of prior document—Onus of alleging and proving notice.—

party alleging such knowledge or notice to aver it in his pleadings and to prove it. *CHINNAPPA REDDI v. MANICKAVASAGAM CHETTI* (1901)

[1 L. R., 25 Mad., 1]

3.—Conflict between registered and unregistered documents—Long possession by usufructuary mortgagee under an unregistered instrument—Title.—Defendant and his father had taken possession of certain land as usufructuary mortgagees in 1877, and had held possession of it ever since. The document witnessing the mortgage was never registered. The land was subsequently purchased by them. At a date later than the purchase, plaintiff obtained a mortgage over the land, which was duly registered. Plaintiff now sued to recover possession of the land: Held that he was not entitled to recover. Defendant had been in possession as usufructuary mortgagee though under an unregistered document, since 1877; and s. 50 of the Registration Act does not affect the operation of the law of limitation in favour of a person who claims under an unregistered document. *Nallamattu Pillai v. Betha Naickan*,

REGISTRATION ACT (III OF 1877)— continued

—s. 50—concluded.

I. L. R., 23 *Mad.*, 37, referred to *BUDANKAYALA BALAKRISHNAMMA SUBUDHI v. VIKATARA RAYA SINGI BISOI* (1902) . *I. L. R.*, 26 *Mad.*, 72

4.—*Prior and subsequent incumbrancers—Notice—Prior incumbrance not compulsorily registrable, but incumbrancer in possession.*—Held that, if a person about to take a mortgage which must be made by registered deed, finds some person other than the intending mortgagor in possession, the fact of such possession is sufficient to put the would-be mortgagee on inquiry as to the title of such person, and, if such person's title is that of a prior mortgagee under a document not compulsorily registrable, the second

[*I. L. R.*, 25 *Al.*, 388

—s. 50 and s. 17—

—*Registration—Constructive notice—Possession*—A registered document contained a recital of unregistered incumbrances, and, a question having

cover unregistered documents under which the holders of registered documents derive title. The defendants further relied on their being in actual possession. Possession amounts to notice of such title as the person in possession may have, and any other person who takes a mortgage or other charge upon, or

—s. 60—

—*Ss. 60, 87—Registration of a deed—Omission to seal.*—The sealing of a deed is not an essential part of the act of registration. The omission of the Registering Officer to seal a deed is a mere defect of procedure, and the defect is cured by the provisions of s. 87 of the Registration Act. *SITA NATH BANOJADHYA v. BISSESTER ROY CHAUDHURI* (1901) .

—s. 64, 65—

See ante, s. 23 . *I. L. R.*, 25 *Bom.*, 50

—s. 73, 74, 75, 76 and 77—

—*Refusal by Sub-Registrar to register, on the ground of denial of execution—Application to*

REGISTRATION ACT (III OF 1877)— continued.

—s. 73, 74, 75, 76 and 77—concluded.

lands, no suit will lie in a Civil Court to compel

—s. 77—

See ante, ss. 73, 74, 75, 76 AND 77.

—*Limitation—Registration—Suit to enforce registration—Limitation Act (IX of 1877), ss. 6, 13—Period of limitation, computation of.*—An

—s. 83—

See CHARGE—FORM OF CHARGE—FOREIGNER . *I. L. R.*, 30 *Cal.*, 822

REGISTRATION ACT (III OF 1877)—
concluded.

— s. 82—concluded.

See FALSE EVIDENCE—GENERAL CASES.
[5 C. W. N., 44]

— s. 87—

See ante, ss. 32, 34 AND 87.

See ante, s. 60 . 5 C. W. N., 528

REGULATION.

See BENGAL REGULATION.

See BOMBAY REGULATION.

See MADRAS REGULATION.

—1872—III—

See SONTAL PARGANAS SETTLEMENT
REGULATION.**RE-HEARING.**

See CIVIL PROCEDURE CODE—

s. 108;

s. 360 . 5 C. W. N., 816

See DISCHARGE OF ACCUSED.

[I. L. R., 28 Cal., 662]

See REVIEW.

See SMALL CAUSE COURT, PRESIDENCY
TOWNS—RE-HEARING.**RELATIONSHIP.**

See SECURITY FOR GOOD BEHAVIOUR.

[I. L. R., 25 All., 131]

— statements as to—

See EVIDENCE ACT, s. 32.

RELEASE.

— deed of—

See STAMP ACT (II OF 1899), SCH. I,
ART. 55, 23 AND 62 (e).

[I. L. R., 24 All., 372]

— of claim secured by mortgage—

See PARTIES—PARTIES TO SUITS—MORT-
GAGES, SUITS CONCERNING.

[I. L. R., 30 Cal., 755]

RELIEF.

See CONSEQUENTIAL RELIEF.

— alternative—

See BENGAL TENANCY ACT, s. 155.

[I. L. R., 30 Cal., 1063]

— not asked for in plaint—

See PLAINT—GENERAL CONSTRUCTION
OF PLEADINGS . 5 C. W. N., 20**RELIGION.**— interference of religious prejudice with
common law rights—See INJUNCTION—SPECIAL CASES—
TRESPASSING TREES . I. L. R., 24 All., 4

— offences relating to—

See MISCHIEF . I. L. R., 24 All., 1

— Offences relating to—Indian Penal Code
(Act XLV of 1860), ss. 153, 298—Wantonly
giving provocation with intent to cause— Disturbing a religious assembly—Religious
procession on highway—Legality—Chanting
hymns by ordinary worshippers.—By a decree
in a civil suit, the Tungalai sect in a certain
district were declared entitled to hold certain off-Vadagalais followed, also chanting hymns. A com-
plaint was in consequence laid by a member of the
Tungalai sect, charging the Vadagalais (1) with
wantonly giving provocation with intent to causeto secure freedom from molestation when people meet
for the performance of acts in a quiet spot vested for
the purpose of the assembly meeting, and not when

persons use a highway together for some common

RELIGION—continued.

that the *Tengalais* were not "lawfully" engaged

proved, and consequently no offence had been committed. *Per BHASHTAM AYYANGAR, J.* (at the first

found, to have voluntarily caused disturbance to an assembly lawfully engaged in the performance of

RELIGIOUS ENDOWMENTS ACT.

See ACT—1863—XX.

RELIGIOUS INSTITUTIONS.

See ACT—1863—XX.

See HINDU LAW—ENDOWMENT.

See MAHOMEDAN LAW—ENDOWMENT.

See RIGHT OF SUIT—CHARITIES.

RELIGIOUS PERSONS.

See HINDU LAW—INHERITANCE—RELIGIOUS PERSONS.

RELINQUISHMENT OF CLAIM.

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE

[I. L. R., 25 All., 79

See RIGHT OF SUIT—POSSESSION, SUITS FOR—CO-DEFENDANTS.

[8 C. W. N., 314

1.—*Civil Procedure Code (Act XIV of 1882), s. 43—Transfer of Property Act (IV of 1882), s. 99—Agreement to pay a debt partly in cash and to secure balance by mortgage, or, in default, to execute mortgage for whole amount—Failure to pay part in cash—Decree for such part—Second suit, to enforce giving of mortgage for balance, barred—On a settlement of account between plaintiff and defendant No. 1, it was found that Rs15,505 were due by the first defendant to the plaintiff, and an agreement was made between them that Rs4,000 of this*

and was duly registered. The first defendant

2.—*Civil Procedure Code (Act XIV of 1882),*

for damages for breach of the contract to convey, and as such was barred under s. 43 of the Code of Civil Procedure, inasmuch as the damages claimed

REGISTRATION ACT (III OF 1877)—
concluded.—s. 82—*concluded.**See* FALSE EVIDENCE—GENERAL CASES.
[5 C. W. N., 44]

—s. 87—

See ante, ss. 32, 34 AND 87.*See ante*, s. 60 . 5 C. W. N., 528**REGULATION.***See* BENGAL REGULATION.*See* BOMBAY REGULATION.*See* MADRAS REGULATION.

—1872—III—

See SOUTHERN PARGANAS SETTLEMENT
REGULATION.**RE-HEARING.***See* CIVIL PROCEDURE CODE—
s. 108;

s. 800 . 5 C. W. N., 816

See DISCHARGE OF ACCUSED.
[I. L. R., 28 Calc., 852]*See* REVIEW.*See* SMALL CAUSE COURT, PRESIDENCY
TOWNS—RE-HEARING**RELATIONSHIP.***See* SECURITY FOR GOOD BEHAVIOUR.
[I. L. R., 25 All., 131]

—statements as to—

See EVIDENCE ACT, s. 32.**RELEASE.**

—deed of—

See STAMP ACT (II OF 1899), SCH. I,
ART. 55, 23 AND 62 (c).

[I. L. R., 24 All., 372]

—of claim secured by mortgage—

See PARTIES—PARTIES TO SUITS—MORT-
GAGES, SUITS CONCERNING.

[I. L. R., 30 Calc., 755]

RELIEF.*See* CONSEQUENTIAL RELIEF.

—alternative—

See BENGAL TENANCY ACT, s. 155.

[I. L. R., 30 Calc., 1083]

—not asked for in plaint—

See PLAINT—GENERAL CONSTRUCTION
OF PLEADINGS . 5 C. W. N., 20**RELIGION.**—interference of religious prejudice with
common law rights—*See* INJUNCTION—SPECIAL CASES—CUT-
TING TREES . I. L. R., 24 All., 499

—offences relating to—

See MISCHIEF . I. L. R., 24 All., 155—Offences relating to—Indian Penal Code
(Act XLV of 1860), ss. 153, 296—Wantonly
giving provocation with intent to cause riot—Disturbing a religious assembly—Religious
procession on highway—Legality—Chanting of
hymns by ordinary worshippers.—By a decree
in a civil suit, the *Tengalai* sect in a certain
district were declared entitled to hold certain offices
connected with a temple, and as such office-holders it
was their duty to recite certain hymns in processions.
The rights of the *Padagalais* sect as ordinary
worshippers were not affected by the decree, but the
Padagalais were ordered not to interfere with the
worship of the *Tengalais* in the temple of the hymns when they*Tengalai* sect, charging the *Padagalais* (1) with
wantonly giving provocation with intent to cause
disturbance and (2) with molesting the *Tengalais* in their worship"disturbance" had been proved, within the meaning of
s. 296. *Per SUBRAHMANYA AYYAR, J.*—The object
of s. 296 of the Indian Penal Code presumably is
to secure freedom from molestation when people meet
for the performance of acts in a quiet spot vested for
the time in the assembly exclusively; and not when
they engage in worship in an unquiet place open topurpose does not disturb in any way those who
being lawful; but, as the circumstances attending a

RELIGION—continued.

that the *Tengalass* were not "lawfully" engaged in religious worship because they were engaged in it on a highway, could not be accepted. There is

the special protection given by the Penal Code to assemblies engaged in religious worship. In the

subject to such user. User of a highway as a place

(v.s., 1903)

I. L. R., 28 Mad., 554

RELIGIOUS ENDOWMENTS ACT.

See ACT—1863—XX

RELIGIOUS INSTITUTIONS.

See ACT—1863—XX.

See HINDU LAW—ENDOWMENT

See MAHOMEDAN LAW—ENDOWMENT.

See RIGHT OF SUIT—CHARITIES

RELIGIOUS PERSONS.

See HINDU LAW—INHERITANCE—RELIGIOUS PERSONS.

RELINQUISHMENT OF CLAIM.

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE

[I. L. R., 25 All., 79

See RIGHT OF SUIT—POSSESSION, SUITS FOR—CO-DEPENDANTS.

[N. C. W. N., 314

1.—*Civil Procedure Code (Act XIV of 1882), s. 43—Transfer of Property Act (IV of 1882), s. 99—Agreement to pay a debt partly in cash and to secure balance by mortgage, or, in default, to execute mortgage for whole amount—Failure to pay part in cash—Decree for such part—Second suit, to enforce giving of mortgage for balance, barred.—On a settlement of account between plaintiff and*

was dated 16th June, 1895, was put into writing, and was duly registered. The first defendant

agreed, plaintiff obtained a decree for specific performance, in pursuance of which the price was paid and a conveyance executed. Plaintiff was then obliged to sue for possession, when it was found that the sale did not bind the son's interest, and on grounds of convenience plaintiff was awarded the value of defendant's share instead of a decree for partition. He now sued to recover the balance of the price paid.

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM —concluded—

9.—*Civil Procedure Code (Act XIV of 1852)*,
§ 11.—*Omission to include present claim for land
in a former suit for other land—Ground of title
similar in both suits, but defendants different*

relinquish that possession, and
their late father, thereupon, namely in 1887, insti-
tuted a suit and obtained a decree against that
person for the recovery of lands B. In 1896 the
defendant attempted to take possession of the lands
person,
possession
suit
against that other person, in which they also claimed,
as the heirs of their late father, to recover possession
of the lands A. The persons who had withheld
possession of the lands B and A respectively, were
different, and the High Court found as a fact
that there had been no combination or privity
between them in respect of the lands which they

claim in the previous suit: *See* that the claim was
maintainable. *DAMPANABOTTA GANGI v. ADDALA
RAMASWAMI* (1902). I. L. R., 25 Mad., 786

RELINQUISHMENT OF TENANCY.

See LANDLORD AND TENANT—ABANDON-
MENT, RELINQUISHMENT OR SURRENDER
OF TENANCY.

REMAND.

Col

1. POWER OF REMAND 942

2. CASES OF APPEAL AFTER REMAND 22

See PRACTICE—CIVIL CASES—REMAND

—order of—

See APPEAL—

EX PARTE CASES:

[5 C. W. N., 163

ORDERS . 7 C. W. N., 440

See APPEAL TO PRITY COUNCIL—CASES
IN WHICH APPEAL LIES OR NOT—
APPEALABLE ORDERS.

[I. L. R., 35 All., 629

See SPECIAL OR SECOND APPEAL—ORDERS
SUBJECT OR NOT TO APPEAL.

[I. L. R., 29 Calc., 60

REMAND—continued.

—refusal of—

See PARTITION—MISCELLANEOUS CASES

[5 C. W. N., 698

1. POWER OF REMAND.

1.—*Civil Procedure Code, ss. 562, 564, 566—*

remitting a case to the court of first instance.

Das v. Anoraja (1887), I. L. R., 14 All., 332;
Salima Bibi v. Sheikh Muhammad (1893),
I. L. R., 19 All., 131; *Mina Lal v. Imtiaz Ali*
(1896), I. L. R., 19 All., 332; *Rafit Ram v.*
Katesar Nath (1896), I. L. R., 19 All., 398;
Ganesa Bhikaji Jurekar v. Bhikaji Krishna
Jurekar (1896), I. L. R., 10 Bom., 393; and *Kesu*
Mulachari Nayur v. Chendu (1896), I. L. R., 19
Mad., 157, referred to *HARID BAKSH v. BALDFO*
PRASAD (1901). I. L. R., 23 All., 167

2. CASES OF APPEAL AFTER REMAND

2.—*Appeal from order of remand—Civil*
Procedure Code (Act XIV of 1852), ss. 53, 562—
Remand order, informal—Appeal—When an
order of remand is made by the court of first instance

3.—*Civil Procedure Code*
(Act XIV of 1852), s. 553 (23)—Appeal against
order remanding case for disposal—Decision by
Sub-Collector in summary suit under Rent Re-
covery Act—Remand by District Court—Appeal
—Rent Recovery Act (Mad. Act VIII of 1863),
s. 69—"Judgment."—In a summary suit under the
Rent Recovery Act, the Sub-Collector held a patta to
be improper, and released certain property from
attachment. On an appeal being preferred, the Dis-
trict Judge reversed the finding of the Sub-Collector,
and remanded the case, under s. 562 of the Code of
Civil Procedure, for disposal according to law. Plaintiff
appealed to the High Court against the order
of remand, when it was objected that no appeal lay:

REMAND—concluded.**2. CASES OF APPEAL AFTER REMAND—concluded.**

Held that an appeal lay. It was competent to the District Judge to make the order of remand under

Code of Civil Procedure. It was also a formal expression of a right claimed in a Civil Court. *VEERASWAMY v. MANAGER, PITTAPUR ESTATE* (1902). I. L. R., 28 Mad., 518

4.—Validity of order of remand—Civil Procedure Code (Act XIV of 1892), ss 562, 566, 578, 599—Jurisdiction, meaning of the term—Remand order in contravention of s. 561—Whether the remand and the subsequent proceedings null and void—Whether legality of the remand order could be questioned on an appeal from the final decree—The term "jurisdiction," in s 578 of the

decree was passed by the Court in favour of the plaintiff. On appeal the decree was modified by the

remand order and the subsequent proceedings could be questioned on second appeal from the final decree, although no appeal had been preferred against the order itself under s 598, cl (29), of the Civil Procedure Code. *MOHES CHANDRA DASS v. JAMIRUDDIN MOLLAR* (1901)

[I. L. R., 28 Calc., 324;
S.C., 8 C. W. N., 509

RE-MARRIAGE

See HINDU LAW—DISQUALIFICATIONS—RE-MARRIAGE

RENT.

See ABATEMENT OF RENT.

See APPORTIONMENT OF RENT.

See ENHANCEMENT OF RENT

See MADRAS RENT RECOVERY ACT.

See SMALL CAUSE COURT, MUFUSSIL—JURISDICTION—RENT

RENT—continued.

—additional, for additional area—

See BENGAL TENANCY ACT—

s. 52; . I. L. R., 29 Calc., 247
[8 C. W. N., 318, 320.

s. 153 . . . 6 C. W. N., 592

—appeal in suit for—

See APPEAL—ACTS—BENGAL TENANCY ACT, s 153 . . . 7 C. W. N., 908

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—RENT.

—ARREARS OF—

See BENGAL TENANCY ACT, SCH. III—

ART. 2;

ART. 6 . . . 8 C. W. N., 763.

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.

See LIMITATION ACT, 1877, SCH. II, ART. 110.

See RENT, SUIT FOR

See SALE FOR ARREARS OF RENT.

See SALE IN EXECUTION OF DECREE—IMMOVABLE PROPERTY.

[5 C. W. N., 497

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[I. L. R., 28 Calc., 582;
8 C. W. N., 515

See VENDOR AND PURCHASER—BREACH OF CONTRACT . . . 7 C. W. N., 905

—deposit of, in Court—

See BENGAL TENANCY ACT, SCH. III, ART. 2(a) . . . I. L. R., 29 Calc., 283.

—evidence as to rate of—

See EVIDENCE—PAROL EVIDENCE—EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES.

[8 C. W. N., 242

—in lieu of interest—

See MORTGAGE—CONSTRUCTION—USE—FRUCTUARY MORTGAGE.

[I. L. R., 29 I. A., 148

—liability for—

See INHERITANCE . . . 5 C. W. N., 189.

See JOINT TENANCY . . . 8 C. W. N., 111

See LANDLORD AND TENANT—

OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION; . . . 5 C. W. N., 816

LIABILITY FOR RENT;

HOLDING OVER AFTER TENANCY.

[I. L. R., 27 Bom., 262.

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

RENT—concluded.**—limit of—**

See BENGAL TENANCY ACT, s. 48, CL. (a)
[I. L. R., 28 Calc., 188

—payment of—

See LANDLORD AND TENANT—

CONSTITUTION OF RELATION—
ACKNOWLEDGMENT OF TENANCY
BY PAYMENT OF RENT;

PAYMENT OF RENT.

—presumption as to amount of—

See BENGAL TENANCY ACT, s. 51.
[8 C. W. N., 589

—presumption as to fixity of—

See BENGAL TENANCY ACT, s. 50
[5 C. W. N., 60

—rate of—

See KHOTI SETTLEMENT ACT, s. 8.
[I. L. R., 27 Bom., 71

—receipt of—

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT.

—receipt of proportionate parts of, from various tenants—

See BENGAL TENANCY ACT, s. 88
[8 C. W. N., 823

—recovery of—

See LAND REGISTRATION ACT (BEN ACT VII OF 1876), s. 78
[5 C. W. N., 380

See MADRAS RENT RECOVERY ACT.

—settlement of—

See BENGAL TENANCY ACT, s. 107.
[I. L. R., 28 Calc., 678

—suspension of—

See N.W. PROVINCES RENT ACT (XII OF 1881), s. 23.
[I. L. R., 24 All., 465

—to whom payable—

See LANDLORD AND TENANT—TRANSFER BY LANDLORD . 7 C. W. N., 454

RENT, SUIT FOR.

See ACQUIESCENCE . 7 C. W. N., 170
See APPEAL—N. W. P. ACTS—N. W. P. RENT ACT (XII OF 1881), s. 189.

[I. L. R., 23 All., 283

See BENGAL TENANCY ACT.

See ESTOPPEL—

ESTOPPEL BY JUDGMENT;

[I. L. R., 28 Calc., 318

ESTOPPEL BY CONDUCT.

[I. L. R., 29 Calc., 126

RENT, SUIT FOR—continued.

See JURISDICTION—SUITS FOR LAND—RENT.

See LANDLORD AND TENANT—

LIABILITY FOR RENT;
PAYMENT OF RENT.

See N.W. PROVINCES RENT ACT (XII OF 1881), CH II AND S. 93.
[I. L. R., 28 All., 270

See PARTIES—PARTIES TO SUITS—RENT, SUITS FOR, AND INTERVENORS IN SUCH SUITS.

See RES JUDICATA—

ESTOPPEL BY JUDGMENT;
[8 C. W. N., 66

MATTERS IN ISSUE—ILLEGAL CESS.
[I. L. R., 28 Calc., 17

See RESUMPTION—EFFECT OF RESUMPTION—EFFECT ON PATA

[I. L. R., 30 I. A., 159

See SMALL CAUSE COURT—MORTGAGE—JURISDICTION—RENT.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[I. L. R., 28 Calc., 116

1.—Act X of 1859—Land—Act X of 1859, s. 23, cl. 4—Mining lease—Revenue Courts, jurisdiction of—Suits, cognizance of.—The word 'land', in s. 23, cl. 4, of Act X of 1859, refers to land granted for agricultural or horticultural purposes.

[I. L. R., 28 Calc., 485;
s.c., 5 C. W. N., 840

2.—By what Court triable—Jurisdiction—Munsif, jurisdiction of—Bengal Tenancy Act (VIII of 1885), s. 144—Civil Procedure Code (Act XIV of 1882), ss. 15 and 17—Civil Courts Act (XII of 1857), s. 19—Cause of action—Pecuniary limitation—Second appeal.—S. 144 of the Bengal Tenancy Act is controlled by ss. 15 and 17 of the Civil Procedure Code. A suit for rent is therefore to be instituted, subject to pecuniary limitations, in the Court of the lowest grade competent to try it. FAZLUR RAHIM ABU AHMED v. DWARKA NATH KHOWDREY (1903)

[I. L. R., 30 Calc., 453;
s.c., 7 C. W. N., 402

3.—Right of suit—Civil Procedure Code (Act XIV of 1882), s. 12—Suit for cancellation of patta and for meane profits—Rent for the same period—Maintainability of such a suit—Plaintiff, in the first instance, sued the defendant for cancellation of the patta lease which the latter held under him, and for meane profits. He also brought a

RENT, SUIT FOR—concluded.

second suit against the defendant, to recover arrears of rent for the same period. *Held* that s 12, Civil Procedure Code, was no bar to the maintainability of the second suit, and that plaintiff could simultaneously prosecute the two suits. The decree of the second suit was not, however, allowed to be executed till the first suit was finally decided in appeal. Plaintiff brought the suit in the double

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U. W. N., 720

4. ——— Landlord and tenant
—Enhancement of rent, suit for rent and for
—Maintainability of suit—Civil Procedure Code
(Act XIV of 1852), s. 45—Onus—Rajyat at fixed
rate.—A suit for both enhancement and arrears of
rent at an enhanced rate is maintainable. The causes
of action, although separate, may be combined under
s. 45, Civil Procedure Code. In a suit for
enhancement of rent at a fixed rate, the plaintiff is
entitled to claim the rate of rent as stated in the Settlement proceed-
ings. *PUDMANUND SINGH v. GRANSHYAM MISSEER*
(1902) 6 C. W. N., 914

U. W. N., 880

5.—Settlement proceedings—Bengal Tenancy Act (VIII of 1885), Ch. X—Record of rights—Publication of record—Rate of rent.—In a suit for rent which accrued due after the final publication of a record of rights, the plaintiff is entitled to claim the rate of rent as stated in the Settlement proceedings. *PUDMANUND SINGH v. GRANSHYAM MISSEER* (1902) 6 C. W. N., 914

the plaintiff was entitled to claim the rate of rent as stated in the Settlement proceedings. *PUDMANUND SINGH v. GRANSHYAM MISSEER* (1902) 6 C. W. N., 914

RENUNCIATION OF RIGHTS.

See WAIVER.

REPEAL OF ACT, EFFECT OF.

See CALCUTTA MUNICIPAL ACT, 1899—

ss. 391 AND 449; 7 C. W. N., 374

§ 443 . . . 7 C. W. N., 554

See PETROLEUM ACT (VIII OF 1899),

ss 1 (3), 11 AND 15 . 7 C. W. N., 658

REPORT.

—of Commissioner—

See COMMISSIONER FOR TAKING ACCOUNTS . . . 5 C. W. N., 692

—of police—

See POLICE REPORT.

REPORT—concluded.

— of Registrar of High Court—

See PRACTICE—CIVIL CASES—REPORT OF REGISTRAR.

— post mortem—

See EVIDENCE—CRIMINAL CASES—MEDICAL EVIDENCE . . . C. W. N., 98

REPORTS OF CASES.

See LAW REPORTS ACT.

[I. L. R., 28 Calc., 289

— The proper use to be made, by Courts, of Reports of cases, considered. *SOVENDEKA MOHTAN TAGORE v. SIKHOMONI DEBI* (1900)

[I. L. R., 28 Calc., 171
S.C., 5 C. W. N., 307.

REPRESENTATIVE.

See CIVIL PROCEDURE CODE, s 244—PARTIES TO SUIT.

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES.

REPRESENTATIVE OF DECEASED PERSON.

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS.

[I. L. R., 26 Mad., 101

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

See PARTIES—SUBSTITUTION OF PARTIES.

— appeal by—

See MALICIOUS PROSECUTION.

[I. L. R., 26 Mad., 499

— execution of decree—

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

— not made party—

See APPEAL—ORDERS.

[I. L. R., 24 All., 532

— suit against—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—MINOR.

[I. L. R., 25 Bom., 574

See LIMITATION ACT, 1877, SCH. II, ART. 120 . . . I. L. R., 25 All., 55

— suit by—

See CERTIFICATE OF ADMINISTRATION.

See CIVIL PROCEDURE CODE, s. 424.

[I. L. R., 25 All., 187

1.—Heir-at-law and residuary legatee—Decree-holder—Judgment-debtor—Substitution of

REPRESENTATIVE OF DECEASED PERSON—continued

heir-at-law and residuary legatee as legal representative—Residuary legatee in possession, effect of—Executor *de son tort*—Probate and administration Act (V of 1891), ss. 4, 12, 13, 15, 19, 38, 52, 157—Succession Act (X of 1865), s. 190—Civil Procedure Code (Act XIV of 1852), s. 234—Pending the execution of a decree, the judgment-debtor died, leaving a will under which R K was the residuary legatee. She took possession of the estate, and applied for letters to be granted with the will annexed. The will was ultimately found to be true, and letters ordered to be granted. In the meantime, R K and the heir-at-law were substituted in place of the judgment-debtor in the execution proceedings, and an order was made *held*, further, that a residuary legatee in possession of the estate of a deceased judgment-debtor could not be regarded as an executor *de son tort*, so that his acts would not be binding upon the legal representative. *Prosvano Chunder Bhattacharye v. Kristo Chytunno Pal* (1878), 1 I. L. R. 4 Cal., 342; *Janakiv. Dhanu Lal* (1891), 1 I. L. R. 14 Mad., 454; *Chathakian v. Govinda Karumar* (1893), 1 I. L. R. 17 Mad., 186, referred to *CHUN LAL ROSE v. OSWOND BERRY* (1903)

[I. L. R., 30 Cal., 1044]

2.—Hindu estate—Contract Act (IX of 1972), s. 45—Right of succession by legal representative—*Aliyasattana* law—Fund settled on marriage of husband and wife—Interest payable to both jointly—Death of husband—Claim by widow by right of survivorship—Right of husband's legal representative to his share—Upon the marriage of first defendant's mother on money was settled by first defendant's mother on first defendant or on K. This money was lent on mortgage, and, by the terms of the mortgage, interest was payable by the mortgagors to first defendant and his husband K, jointly, with the exception of that which would accrue in respect of the last year of the term, which, together with the principal sum secured by the mortgage, was to be paid to first defendant herself. K died, whereupon plaintiff, as K's legal representative, brought the present suit to recover the interest due under the mortgage. *Held* that plaintiff was entitled, under s. 45 of the Contract Act, as the legal representative of K, to a moiety of the interest which had accrued since the death of K, the interest which had accrued since the death of K, first defendant being entitled to the other moiety, and that the right to the whole of the interest did not pass by survivorship to first defendant. The circumstance that K and first defendant intended to live and did in fact live together as husband and wife under the *Aliyasattana* law was insufficient to raise the presumption of a contract that there was to be a right of succession by survivorship between K and first defendant in respect of the settled fund. *KANTHU PUNJA C. VITTANNA* (1901)

[I. L. R., 25 Mad., 385]

3.—Hindu law—Rights of unsecured creditors by way of charge or lien on the inheritance—Position of legal representative

REPRESENTATIVE OF DECEASED PERSON—concluded.

—Distribution of assets.—The unsecured creditors of a deceased Hindu have no charge or lien on the inheritance. If payments are not made by the heir rateably, it does not follow that he has failed to apply the assets duly. Every payment on account of a debt is perfectly lawful, irrespective of its effect upon the other creditors, and is a due application of the assets, within the meaning of a 253 of the Code of Civil Procedure. There is no analogy between the case of an executor who is governed by the special provisions of the Succession Act, and that of a legal representative under the Hindu law, with reference to the question of the distribution of the assets among creditors. Where property of a deceased remains in the hands of the legal representative, it does not necessarily follow that a creditor is entitled to proceed against it as assets in the hands of the legal representative. The question to be considered is the real effect of what has been done, and, where payments have been made by the legal representative to the extent of the full value of the property of the deceased which has come into his hands, a decree cannot be executed, even although he may still have in his possession property which originally belonged to the deceased. *VEERASEKARAJU C. PATTAR* (1902) 1 I. L. R., 28 Mad., 792

REPUTE.

—evidence of—

See SECURITY FOR GOOD BEHAVIOUR.

RE-SALE.

See CONTRACT—BREACH OF CONTRACT. [7 C. W. N., 562]

RESIDENCE.

See FOREIGN COURT, JUDGMENT OF. [5 C. W. N., 741]

See HINDU LAW—

HUSBAND AND WIFE; [I. L. R., 28 Cal., 751]

MAINTENANCE—RIGHT TO MAINTENANCE—SON'S WIDOW. [I. L. R., 29 Cal., 557]

See JURISDICTION—CASES OF JURISDICTION—DWELLING.

See SECURITY FOR GOOD BEHAVIOUR. [5 C. W. N., 29]

RESISTANCE.

—to execution of WARRANT OF attachment issued by Civil Court—

See WARRANT OF ATTACHMENT. [I. L. R., 29 Cal., 244]

RESISTANCE OR OBSTRUCTION TO ARREST.

See WARRANT OF ARREST—CIVIL CASES. [5 C. W. N., 843]
[6 C. W. N., 845]

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE

See LIMITATION ACT, 1877, SCR. II, ART. 11 I. L. R., 26 Bom., 146

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.

[I. L. R., 29 Calc., 25

1.—Dispossession—Symbolical possession, effect of—Civil Procedure Code (Act XIV of 1882), ss. 318, 335—Jurisdiction.—Symbolical possession does not amount to dispossession as contemplated by s. 335 of the Code of Civil Procedure. *IBRAHIM MULLICK v. RAMJADU RAKSHIT* (1903)

[I. L. R., 30 Calc., 710

2.—Obstruction—Civil Procedure Code (Act XIV of 1882), s. 331—"Possession"—Constructive possession—Obstruction in possession in execution of decrees—Construction—The word "possession", as used in s. 331 of the Civil Procedure Code (Act XIV of 1882), is not limited to actual physical possession. It includes also constructive possession, such as possession by a tenant. So held by *CANDY and TRAMM, JJ., WHITWORTH, J.*, dissenting. Where premises sought to be recovered in execu-

[I. L. R., 25 Bom., 478

3. — Civil Procedure Code (Act XIV of 1882), s. 331—Specific Relief Act (I of 1877), s. 9—Suit for possession—Execution of decrees—Obstruction—Application for removal of obstruction registered as a suit—Questions arising in such suit.—In the case of a claim numbered and registered, under s. 331 of the Civil Procedure Code (Act XIV of 1882), as a suit between a decree-holder and an obstructing claimant, the only issues arising are whether the person obstructing was in possession of the property in question on his own account or on account of some person other than the judgment-debtor (i.e., the defendant in the original suit). No question requiring the decree to be reopened can be raised. *MAHOMED ISUR v. BASHOTAFPA BIN TAKAPPA* (1903)

[I. L. R., 27 Bom., 302

RES JUDICATA.

Col.

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| 1. GENERAL CASES | 952 |
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| 3. ADJUDICATIONS | 955 |
| 4. ORDERS IN EXECUTION OF DECREE | 957 |
| 5. CAUSES OF ACTION | 958 |
| 6. MATTERS IN ISSUE | 960 |
| 7. PARTIES — | |
| (a) SAME PARTIES OR THEIR REPRESENTATIVES | 965 |
| (b) CO-DEFENDANTS | 966 |
| (c) DIFFERENT PARTIES | " |

RES JUDICATA—continued.

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| 8. COMPETENT COURT— | Col. |
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| (b) SMALL CAUSE COURT CASES | " |
| (c) REVENUE COURTS | 963 |
| 9. RELIEF NOT GRANTED | 971 |

See BENGAL TENANCY ACT—

s. 51; . . . O. C. W. N., 589

■ 107 . I. L. R., 28 Calc., 676

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE.

[I. L. R., 25 All., 546

See ESTOPPEL—ESTOPPEL BY JUDGMENT.

See INJUNCTION—DISOBEDIENCE OF ORDER FOR INJUNCTION.

[I. L. R., 23 All., 485

See POSSESSION—SUITS FOR POSSESSION.

[I. L. R., 26 Mad., 514

See RIGHT OF SUIT—POSSESSION, SUITS FOR—CO-DEFENDANTS.

[8 C. W. N., 314

1. GENERAL CASES.

1.—Execution proceedings—Execution of decrees—Principle of *res judicata* as applied to execution proceedings—Succession certificate—Act VII of 1899 (Succession Certificate Act), s. 4—The principle of *res judicata* applies to prevent parties raising a second time in the same suit, or in the same execution proceedings, an issue which, in that suit or in the execution proceedings in that suit, had previously been determined. The principle of *res judicata* does not depend for its application upon the question whether the decision which is to be

judicata by saying that the suit was applied to the

Kuara (1893), I. L. R., 11 All., 405, referred to *BEHARI LAL v. MAJID ALI* (1897)

[I. L. R., 24 All., 138

2.—No decision in previous suit—Civil Procedure Code (Act XIV of 1882), s. 13.—Where a certain matter was not really dealt with and decided in a previous suit, although an issue was raised in regard to that matter, a subsequent suit involving the same matter would not be barred by reason of the previous suit. *UMESH CHANDER DEY v. SHAMBHUR CHUNDER* (1901)

[5 C. W. N., 304

RES JUDICATA—continued.

2. ESTOPPEL BY JUDGMENT.

3.—Assignment of revenue—Assignee of Government revenue—Interest on arrears—Act XII of 1881 (*N.W. P. Rent Act*), s. 93 (i)—Act XVIII of 1873 (*N.W. P. Land revenue Act*), s. 148—Civil Procedure Code, s. 13—Act VIII of 1859 (*Civil Procedure Code*), s. 2—Held by BANERJI and AIKMAN, JJ., that an assignee of Government revenue cannot sue for interest on arrears. *Bithal Das v. Harphul* (1894), I. L. R., 6 All., 503, referred to. Where A, assignee of Government revenue, sued B for arrears of revenue and interest thereon in regard to one *khata*, and got a decree which included interest, and in a subsequent similar suit in regard to another *khata* B again resisted A's claim for interest: Held by BANERJI, J., that the fact that the reasoning upon which the former judgment was based was equally applicable to the second case did not give the former judgment the force of *res judicata* in the second case. Held

4. Civil Procedure Code, s. 13—Assignment of the Government revenue of a village divided into "khatas"—Claim for interest on revenue in arrears—Decision as to one *khata* *res judicata* in respect of other *khatas*—The plaintiff was assignee of the Government revenue of a certain village. The village was divided into *khatas*, but the title to the revenue in respect of each and every *khata* was one and the same. The plaintiff sued to recover arrears of revenue due in respect of *khata* No. 29, with interest. On his right to receive

5.—Decrees for cesses—Evidence—Presumption—Landlord and tenant—Decree in suit for Road and Public Works cesses—Previous

of the tenant. RICKETTS & RAMESWAR MALIA (1900) I. L. R., 28 Calc., 109

6.—Judgment of higher Court—Civil Procedure Code (*Act XIV of 1882*), s. 13—Sue by A against B in City Civil Court—Subsequent suit in High Court by B against A, raising same

RES JUDICATA—continued.

2. ESTOPPEL BY JUDGMENT—continued.

the Madras High Court on its Original Side, against A. The parties in both Courts were the same, and the matters in controversy between them were substantially the same. The latter related to

res judicata, so far as it relates to prohibiting the re-trial of an issue, refers, not to the date of the commencement of the litigation, but to the time when the Judge is called upon to decide the issue. *Balkishan v. Kishan Lal*, I. L. R., 11 All., 148, approved and followed. GURURAJAMMAH & VENKATAKRISHNAMA CHETTI (1901)

[I. L. R., 24 Mad., 350]

7.—Mistake of law—Civil Procedure Code (*Act XIV of 1882*), s. 13—D and E were divided brothers. R, in conjunction with the senior of his two wives, and to the exclusion of the junior wife, adopted a son of D on 27th October, 1879. On the same day, R settled some properties on his junior

not a declaration that he, as the reversionary heir of the deceased adopted son, was entitled to succeed to the properties left by R (including those settled on the widow and daughter) after the lifetime of the widow. The claim was dismissed in so far as it related to the settled property, but D was declared to be entitled, as reversioner, to the other properties left by R, after the lifetime of the widow. In 1891

8.—Mortgage—Act IV of 1882 (*Transfer of Property Act*), ss. 60, 92 and 93—Mortgage—Redemption—Decretal money not paid in within the time limited by the decree—Decree not in

RES JUDICATA—continued.

2. ESTOPPEL BY JUDGMENT—concluded.

accordance with the Transfer of Property Act—Subsequent suit for redemption not barred—Civil Procedure Code, ss. 13, 244.—The plaintiffs brought a suit for redemption of a usufructuary mortgage, and obtained a decree for redemption, conditioned on their paying a certain sum within a time specified in the decree. This decree, however, instead of going on to direct that in default of payment by the due date the property should be sold, directed that if payment was not made within the time fixed the "judgment should be deemed to be non-existent." The plaintiffs did not pay the decretal amount within the time fixed, but some years afterwards brought a second suit for redemption. Held that the second suit was not, under the circumstances, barred, either by reason of anything contained in the Transfer of Property Act, 1882, or by s. 13 or s. 244 of the Code of Civil Procedure. *David Hay v. Raziuddin* (1897), 1 L. R., 19 All., 202, overruled. *Sami*

1863, p. 891; *Sheikh Golam Hoosen v. Musamat Alla Rukhes Beebe*, N.-W. P. H. C. Rep.,

(1870), 18 Moo. I. A., 404, referred to. *SITA RAM v. MADHO LAL* (P. B., 1901) 1 L. R., 24 All., 44

9.—Question of title raised in rent suit—Civil Procedure Code (Act XIV of 1883), s. 19.—Where a question of title was decided in a suit for

15 Cal., 766, distinguished. *NITYA NUNDA SARKAR v. RAM NARAIN DAS* (1901) 6 C. W. N., 66

3. ADJUDICATIONS.

10.—Division of produce—Act XII of 1881 (N.-W. P. Rent Act), s. 43—Landholder and tenant—Suit to recover rent in kind—Duty of

RES JUDICATA—continued.

3. ADJUDICATIONS—continued.

officer appointed to divide produce or appraise standing crops.—Where, under s. 43 of the North-Western Provinces Rent Act, 1881, an officer is

11.—Execution of decree—Limitation Act (XV of 1877), Sch. II, Art. 179—Application in execution more than three years after previous application—Omission on part of judgment-debtor to set up bar by limitation—Adjudication on application—Subsequent application in execution—Objection on ground that previous application was barred.—A decree was obtained on 16th March, 1893, and a petition in execution was presented on 8th February, 1894. The next petition in execution was presented on 2nd July, 1897, when the judgment-debtor, though he had notice of it, did not raise the defence of limitation. An order was passed on the petition, for the issue of a warrant for the arrest of the defendant, and the warrant was duly issued. Within three years of that petition the present application in execution was made, when it was objected that, as the application in 1897 had been presented more than three years from the previous application in 1894, it was barred, and that in consequence the present application must also be barred. Held that it was not open to the judgment-debtor now to raise the objection that the application of 1897 was barred. He had had notice of that application, and had raised no objection to it. Execution had been ordered in pursuance of it, which

Chowdhary, L. R., 11 I. A., 123, followed. MANAN CHETTI v. KUTATAN CHETTI (1901) [1 L. R., 24 Mad., 689]

12.—Oath—Oaths Act (X of 1873)—Decree upheld in appeal on strength of oath—Final adjudication.—A suit of 1898 had been affirmed on appeal Oaths original arrived of fact tion.

RES JUDICATA—continued.

3. ADJUDICATIONS—concluded.

13.—Redemption—Transfer of Property Act (IV of 1882), s. 92—Decree for redemption—Omission to execute—Maintainability of subsequent suit on same mortgage—Civil Procedure Code (Act XIX of 1882), ss. 13, 244—Where a suit for redemption has been instituted, and a decree for redemption has been passed therein, but not executed, a subsequent suit is not maintainable for the redemption of the same mortgage. *VEDAPUTRATTI v. VALLABHA VALITA RAJA* (F B., 1902)

[I. L. R., 25 Mad., 300]

14.—Summary proceeding—Bengal Tenancy Act (VIII of 1885), s. 105 (103A), s. 106—Distinction between order under s. 105 (103A) and s. 106—When a Revenue-officer disposes of an objection summarily under s. 105 (103A) of the amended Act) of the Bengal Tenancy Act (VIII of 1885), without adopting the procedure laid down in the Code of Civil Procedure for the trial of suits,

4. ORDERS IN EXECUTION OF DECREE.

15.—Application for two reliefs—Civil Procedure Code (Act V of 1908), s. 12—Former suit

[I. L. R., 25 Mad., 300]

16.—Limitation—Order in execution of decree—Limitation—Previous application for execution refused, and judgment-debtor's objection as to

RES JUDICATA—continued.

4. ORDERS IN EXECUTION OF DECREE—concluded.

its order refused the application for execution and disallowed the objection of the judgment-debtor. On a subsequent application by the decree-holder, the judgment-debtor again objected to the execution on the ground that, inasmuch as the previous application was barred by limitation, the subsequent application was also barred. *Held* that the judgment-debtor was not precluded from raising the objection that the previous application was barred by limitation. *Mungul Pershad Ditch v. Gria* (F B., 1902) 51, distinguished. *LLA NATH*

W. N., 80

17.—Although the execution of a decree may have been actually barred by time at the date of an application made for its execution,

5 CAUSES OF ACTION.

18.—Continuing guarantee—Civil Procedure Code (Act XIX of 1882), s. 13—Suit for arrears of maintenance—Former suit for arrears for a different period—Surety—Continuing guarantee—Pleadings by surety denying liability in a suit do not operate as notice of revocation of suretyship—Contract Act (IX of 1872), s. 130.

RES JUDICATA—continued.

5. CAUSES OF ACTION—continued.

the plaintiff sued both defendants to enforce her rights under the settlement, and (*inter alia*) for arrears of maintenance for ten months and sixteen days from the 10th November, 1897. The defendants pleaded that the deed was void for want of consideration. The first Court found that the settlement was not void, and passed a decree against both the defendants, but, as to the payment of arrears of maintenance, the decree was against the first defendant only. The second defendant appealed against the decree, so far as it was against him, contending that the settlement was not in any way binding on him. The plaintiff filed cross-objections to the decree, contending that the second defendant ought to have been held liable for the arrears of maintenance. At the hearing of the appeal, however, the plaintiff withdrew her cross-objections, and the decree of the first Court was confirmed, with costs. In 1901 the plaintiff filed this suit against both defendants, to recover arrears of maintenance for two years and nine months, commencing from the 27th September, 1898. The second defendant pleaded that, inasmuch as he had not been held liable for maintenance in

right to sue the second defendant as surety in respect of the subsequent arrears claimed in the present suit. It was contended for the second defendant that the pleadings in the former suit operated as notice under s. 130 of the Contract Act (IX of 1872), and put an end to his contract of guarantee. *Held* that the denial by the second defendant of his liability in the pleadings in that suit was made for the purposes of pleading, and could not have any other effect than was given to it in the suit itself. It could not operate as notice under s. 130 of the Contract Act. **BRHABHAI RATANCHAND v. RAI BHURI** (1903) **I. L. R., 27 Bom., 418**

19.—Joinder of causes of action—Civil Procedure Code (Act XIV of 1882), s. 13.—Competency of Court to try subsequent suit—Pecuniary jurisdiction—Suit of a Small Cause Court nature—Issue decided in a previous suit not subject to second appeal.—In order to make a matter *res judicata*, it is not necessary that the two suits must be open to appeal in the same way. **Rai Charan Ghose v. Kumud Mohan Dutt** (1897), **I. L. R., 14 Cal., 100**

20.—Security for costs—Civil Procedure Code (Act XIV of 1882), s. 381—Order that plain-

RES JUDICATA—continued.

5. CAUSES OF ACTION—concluded.

tiff should give security for costs—Failure to comply with order—Dismissal of suit—Subsequently, fresh suit brought on same cause of action—Dismissal of first suit no bar—First suit to recover property direct from defendants—Second

took possession of his estate. The plaintiff returned to Bombay, and as surviving member of the joint Hindu family sued (No. 124 of 1900) the widows for the property. They alleged that he was not a resident of British India, and obtained an order, under s. 380 of the Civil Procedure Code (XIV of 1882), directing that he should give security for costs, or in default his suit should be dismissed. Being unable to comply with the order, his suit was dismissed under s. 381 of the Code. Having learned for the first time during the course of that suit that, in his absence from Bombay, the deceased Naranji Virji had executed two deeds of settlement, by one of which he purported to settle some of the family property in charity and by the other to settle another portion on his widows, the plaintiff subsequently brought this suit to recover the joint family property from the widows. He made the trustees of the two deeds of settlement defendants to the suit, and prayed for a declaration that Naranji Virji had executed the deeds, and that the same were valid, and that the plaintiff was entitled to the property, and that the suit should be reinstated, and that the order of dismissal of the former suit should be set aside, and that the plaintiff should be allowed to continue his suit, and that the costs of the former suit should be paid by the defendants. *Held* that the dismissal of a suit under s. 381 of the Civil Procedure Code does not bar a fresh suit for the same cause of action. *Per Curiam*.—If I had been of opinion that a fresh suit on the same subject-matter could not be brought, I should have held that in respect of all matters included in the deed of settlement it was not a suit on the same subject-matter. **HARISAM MOHANDAS v. LALBAI** (1902) **[I. L. R., 26 Bom., 637]**

6 MATTERS IN ISSUE.

31.—Illegal cess—Code of Civil Procedure (Act XIV of 1882), s. 13, Explan. II—Illegal cess not objected to in former suit for rent—Bengal Tenancy Act, 1855, s. 74—Where, in a suit for rent, the rent claimed expressly includes an item which is objected to as an illegal cess, the mere fact that, in a previous rent-suit, between the same parties regarding the same tenure, the defendant did not

object to the same, does not constitute a bar to the plaintiff's claim in the present suit. **Kailash**

RES JUDICATA—continued.

■ MATTERS IN ISSUE—continued.

22.—Matter for ground of attack—Civil Procedure Code (Act XIV of 1882), s. 13, Expt. II—Matter which might and ought to have been made ground of attack in former suit—On a sale of land by plaintiff to defendant, part of the purchase-money was paid, and a mortgage was given by the defendant in plaintiff's favour for the balance of the purchase-

Plaintiff
dismissed
till now
framing
unpaid
is barred

by Expt. II of s. 13 of the Code of Civil Procedure. Plaintiff might have sued, in his former suit, on the basis of his lien for balance of unpaid purchase-money, and he ought to have done so to avoid the necessity for a second suit in the event of the mortgage being held invalid for want of registration. *Kameswar Pershad v. Rajkumari Ruttan Koor*, I. L. R., 20 Cal., 85, followed. *Akari Kunhi v. Ayissa Bi* (1903)

[I. L. R., 28 Mad., 645]

23.—Matter not in issue as between defendants—Civil Procedure Code (Act XIV of 1882), s. 13—Previous suit in which same matter was in issue between plaintiff and the respective defendants, but not as between the defendants themselves—Suit by one of the then defendants to establish his priority over one of the other defendants—Maintainability—In a former suit, the question whether each of the defendants had mort-

and the rights of the parties not being dealt with further than by making a decree for sale subject to certain incumbrances, of which that of the fifth defendant therein was one. The fifth defendant in that suit now sued, as plaintiff in the present suit,

[I. L. R., 28 Mad., 337]

24.—Mesne profits—Civil Procedure Code (Act XIV of 1882), s. 13, Expts. II and III—Redemption suit—Decree in such suit, making no order as to mesne profits—Subsequent suit by plaintiff for surplus mesne profits accrued due prior to former suit—In a redemption suit brought in 1891, the plaintiff prayed for possession of the

RES JUDICATA—continued.

G. MATTERS IN ISSUE—continued.

mortgaged property and for payment of such sum.

appealed. The plaintiff did not appeal, nor did he file objections to the decree, which was confirmed by the Appellate Court. In 1897 the plaintiff, having obtained possession of the land, filed this suit, in which (*inter alia*) he claimed to recover mesne profits which had accrued due prior to the former suit. Held that the claim was *res judicata*, and was barred. *KACHU v. LAKSHMANING* (1900)

[I. L. R., 25 Bom., 115]

25.—Mortgage—Decree for redemption—Payment of the amount of decree of lower Court, and recovery of possession by mortgagors—Subsequent enhancement in appeal of amount ordered to be paid by decree—Subsequent suit by the mortgagors to recover profits of the mortgaged property for period between recovery of

date at which they obtained possession (March, 1804) and the date at which they paid the full amount

26.—Omission to set up mortgage bond—Civil Procedure Code, s. 13, Expt. II—Omission to set up mortgage bond as a defence in former suit—Subsequent suit on mortgage bond—Civil Procedure Code, s. 43—Relinquishment of part of cause of action—Where, to a suit by a mortgagee on a mortgage bond of certain property, a prior mortgage of the same property is made a party, and omits to set up his prior charge and claim to have it redeemed,

RES JUDICATA—continued.

6. MATTERS IN ISSUE—continued.

a suit subsequently brought by him for that purpose is barred by Expl. II to s. 13 of the Civil Procedure Code. In the same way, if, being a party in a suit, he omits to claim, he cannot, by mortgage he a mortgagee who has several mortgages on the same property treat them, with respect to the provisions of s. 43 of the Civil Procedure Code, as separate causes of action, or must he bring one suit on all his mortgages? **GOPAL & PARTHI SINGH (1902)**

(I. L. R., 24 All. 429 :
S.C., I. L. R., 29 I. A., 118; 6 C. W. N., 689)

27.—Relief not claimed in former suit—*Civil Procedure Code (Act XIV of 1882), s. 13, Expl. II.*—A sued B as his agent and trustee in possession of certain lands, complaining that B had been dealing with the lands as if he (B) were the owner, and had mortgaged them to C. C was made a defendant in the suit. B pleaded that he was the owner of the land, and not merely agent of A. C also pleaded that B was owner, and he produced the mortgage-deed and stated that if he were paid his debt he would not dispute A's claim. The term in C's mortgage deed was one year, at the end of which,

page, alleging that, even though B might not be owner, A had allowed B to deal with the land and to hold himself out as owner, and that thus the mortgage was valid. Both the lower Courts held that the suit was *res judicata*, under Expl. II of s. 13 of the Civil Procedure Code, on the ground that C's present claim might and ought to have been made a ground of defence in the former suit brought by A. *Held*, reversing the decisions of the lower Courts, that the suit was not barred, as no relief was asked or granted as against C in the former suit, though he was a party to it. **RAMDAS & VAKRESABER (1901).** I. L. R., 25 Bom., 589

28.—“Subjects in dispute”—*Civil Procedure Code (Act XIV of 1882), ss. 13 (Expl. II), 42, 43.*—The phrase “the subjects in dispute,” in s. 42 of the Code of Civil Procedure, signifies the jural relation between the parties to the suit, for the determination of which the suit is brought. The object of the section is to require the plaintiff to bring forward his whole case as to the matter of litigation on the question of right involved in the suit, and not to require him to unite all the causes of action which he may have against the defendant in respect of the *corpus* or object-matter of the suit. Though the subject of *res judicata* is dealt with more comprehensively in the present Code than in the former Code, yet ss. 42 and 43 are not exhaustive of the law of *res judicata*. That law has been the same under both the old and the new Codes, and it is

RES JUDICATA—continued.

6. MATTERS IN ISSUE—continued.

substantially the same as the English law. The decision of the Privy Council in *Kameswar Pershad v. Raykumari Rutian*, I. L. R., 20 Calc. 79, explained. Neither of the decisions of the Privy

whether the transaction is sought to be established in different modes or by different means. In a previous suit the present plaintiff, claiming as the legal representative of a deceased mortgagor, sued substantially the same defendants to redeem a mort-

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suit was not barred by s. 43 or s. 13, Expl. II, of the Code of Civil Procedure. **Arunachalam Chetty v. Meyyappa Chetty** I. L. R., 21 Mad., 91, and **Rengaswami Pullai v. Krishna Pillai**, I. L. R., 22 Mad., 259, discussed. **Guddappa v. Tirukappa**, I. L. R., 25 Bom., 189, dissented from. **RAMASWAMI AYYAR & VETHINATHA AYYAR (1903)**

[I. L. R., 28 Mad., 780]

29.—Suit for rent—*Civil Procedure Code (Act XIV of 1882), s. 13—Khoti Settlement Act (Bom. Act I of 1880), s. 33.*—Suit to recover that (rent in kind) for 1898-99.—Previous suit to recover that for 1897-98.—The plaintiff, a khot, sued to recover that (rent in kind) from the defendants for the year 1898-99. He also claimed rent for the betel-nut trees growing on the land. The defence was that, under the *bolikhat* (statement) prepared by the Settlement-officer under the Khoti Settlement Act (Bom. Act I of 1880), the plaintiff was not entitled to claim any rent in respect of the betel-nut trees. A previous suit (No. 718 of 1898) had been brought by the plaintiff against the

RES JUDICATA—continued.

6. MATTERS IN ISSUE—concluded.

statement, but their application was refused. The only issue raised in the case was whether the *dhānani* (estimated produce) was proved. The

or the produce of betel-nuts, may have been wrongly awarded could not alter the provisions of the law,

embodied in Expt. I to s. 13 of the Civil Procedure Code (Act XIV of 1882). *VISHNU VASUDEY JUVAR v RAMLING BHILKING GURAY* (1901) . . . I. L. R., 28 Bom., 25

7. PARTIES

(a) SAME PARTIES OR THEIR REPRESENTATIVES.

30.—Allegation of different titles—Civil

was barred by the provisions of s. 13 of the Civil Procedure Code (Act XIV of 1882). *GERDAPPA v. TIRKAPPA* (1900) . . . I. L. R., 25 Bom., 189

31.—Parties all claiming under one party in former suit—Decision in former suit—Parties in subsequent suit all claiming under one party only in former suit—Deeds, construction of—What passes under deed in absence of words reserving rights—Transfer of Property Act (IV

RES JUDICATA—continued.

7. PARTIES—continued.

(a) SAME PARTIES OR THEIR REPRESENTATIVES—concluded.

s.c., L. R., 30 I. A., 71;
7 C. W. N., 482

32.—Shebaita—Civil Procedure Code (Act XIV of 1882), s. 13—Hindu idol or deity—Shebait. —The decision in a suit brought by one shebait is binding on a succeeding shebait. *TULSIDAS MAHANTA v. BEJOY KISHORE SHOME* (1901) [8 C. W. N., 178

(b) CO-DEFENDANTS.

34.—Civil Procedure Code (Act XIV of 1882), s. 13—*Res judicata* between co-defendants—In a suit for a declaration of title to certain property, when the Court makes a declaration in favour of the plaintiff as to a certain share of the property, and a declaration as to certain other shares in favour of some of the defendants, the latter declaration is not binding on the other defendants. *RAJ NARAIN v. KHOSDARI RAI* (1901) . . . 5 C. W. N., 724

(c) DIFFERENT PARTIES.

35.—Bengal Tenancy Act (VIII of 1885), s. 106—Civil Procedure Code (Act XIV of 1882), s. 13

RES JUDICATA—continued.

7. PARTIES—concluded.

(c) DIFFERENT PARTIES—concluded.

—Plaintiffs initiated proceedings under a. 106 of the Bengal Tenancy Act, against the landlord and the defendants Nos. 2 to 9, who claimed to be rival tenants of the land, to have their names recorded as tenants in the Settlement proceedings. The Settlement-officer held that the plaintiffs were the tenants, and made an order in their favour. On appeal by defendants Nos. 2 to 9, and not by the landlords, the

decision of the Special Judge not having been a decision between the parties, i.e., the tenants on the one hand and the landlord on the other, it could not operate as *res judicata* in the present suit. **MOHUNT JAGANNATH RAMANUJ DAS v. CHANDRA KUMAR BOSE** (1900) . . . 5 C. W. N., 421

8. COMPETENT COURT.

(a) GENERAL CASES.

86.—Previous suit in Munsiff's Court—Civil Procedure Code (Act XII of 1882), s. 13—Suit in Subordinate Court—Valuation of a suit for declaration as to membership of *tarwad*—Specific Relief Act (I of 1877), s. 42—A suit was brought in the Court of a Subordinate Judge for a declaration that the plaintiffs and defendants therein had no community of interest, and were not members of a *tarwad* having joint property. The property of the *tarwad* was valued by plaintiffs at Rs. 3,000, and this was held to be a true valuation, but it appeared that the value of the plaintiffs' interest in it was Rs. 2,000 only. In a previous suit between the parties, which had been brought in

that this did of a portion of the property, which was in the enjoyment of the defendants. Held that the suit was barred, both as *res judicata*, and by s. 42 of the Specific Relief Act. The value of a suit for declaration that certain persons are or are not members of a *tarwad* is the value of the share of the *tarwad* property which would be allotted to them if a partition were made by common consent. **PANGA v. UNNIKUTTI** (1900) . . . I. L. R., 24 Mad., 275

(b) SMALL CAUSE COURT CASES.

37.—Civil Procedure Code (Act XII of 1882), s. 13—Denial of plaintiff's title in a suit for rent—Decree in favour of defendants—Subsequent suit by same plaintiff against same defendants for possession.—In 1893 A sued B, C, D and E in a Munsiff's Court to recover six years' rent alleged by A to be due in respect of certain land on a registered deed of lease B, C and D denied A's title, and pleaded that they were not liable for rent, and that

RES JUDICATA—continued.

8. COMPETENT COURT—continued.

(b) SMALL CAUSE COURT CASES—concluded.

that the land was in the possession of F

recovery of land, and a second appeal would lie from a decree passed in it. Held that the Court which had tried the former case was a Court competent to try the present suit, within the meaning of s. 13 of the Code of Civil Procedure. **Subbammal v. Huddleston**, I. L. R., 17 Mad., 273, and **Bhagwanbhai Chowdhram v. Forbes**, I. L. R., 28 Cal., 78, followed. **Srirangachariar v. Ramasami Ayyangar**, I. L. R., 18 Mad., 169, referred to. **AMEER v. MOIDIN** (1901) . . . I. L. R., 24 Mad., 444

(c) REVENUE COURTS.

38.—Denial of relationship of landlord and tenant—Civil Procedure Code (Act XII of 1882), s. 13—Bengal Tenancy Act (VIII of 1885), s. 13—Treatment—When there

res judicata in a subsequent suit in ejectment and declaration of the title, brought in a Civil Court. **DHARANI KANTA LAHIRI v. GADDER ALI KHAN** (1902) . . . I. L. R., 30 Cal., 389; [s.c., 7 C. W. N., 33]

39.—Ejectment—Act XII of 1891 (North-Western Provinces Rent Act), ss. 93, 95—Jury—District Courts—Suit to eject

the title of the plaintiff, and the names of the persons holding. Civil Court—Possession—Suit could

not have been instituted in a Court of Revenue, and further, that the decision of the Court of Revenue allowing mutation of names in the defendant's favour could not operate as *res judicata* in respect of the present suit. **Subarna v. Bhagwan Khan**, I. L. R., 19 All., 101, distinguished. **Shro Narain Rai v. Parmeshwar Rai**, I. L. R., 15 All., 270; **Dukhna Kuar v. Unkar Pande**, I. L. R., 19 All.

RES JUDICATA—continued.

8 COMPETENT COURT—continued.

(c) REVENUE COURTS—continued.

452, and *Kalians v. Dasu Pande*, I. L. R. 20 All. 529, referred to *Baru Mal v. NIADAR* (1901) [I. L. R. 23 All. 360]

40. *Western Provinces Rent Act*, s. 93, 95—*Act XII of 1881 (North-Western Provinces Rent Act)*, ss 93, 95—*Act of 1873, s. 102*—Jurisdiction—Civil and Revenue Courts—Suit to eject, as a trespasser, a person who claimed to be entitled to the holding of a deceased occupancy-tenant.—Upon the death of an occupancy-tenant, a person, who alleged that he was entitled to succeed to the deceased's occupancy holding, obtained from the revenue-authorities, by means of an application under s. 102 of the North-Western Provinces Land-revenue Act, mutation of names in his favour, and also got into possession of the holding. The same-tenant thereupon brought a suit in a Civil Court for his ejection, on the allegation that he was a mere trespasser, who had no right whatever to succeed to the holding of their late occupancy-tenant. *Held* that such suit was properly brought in a Civil Court and could not have been instituted in a Court of revenue, and the decision of the Revenue-authorities, allowing mutation of names in the defendant's favour, could not operate as *res judicata* in respect of such suit. *Subarni v. Bhagwan Khan*, I. L. R. 19 All. 101, distinguished. *NIADAR v. Baru Mal* (1901) I. L. R. 24 All. 153

41.—Genuineness of document—Civil Procedure Code, s. 13—Decision by a Court of Revenue, in a suit for rent, as to the genuineness of a document, no bar to the determination of such issue by a Civil Court.—In a suit for rent brought in a Court of Revenue, the plaintiff produced in support of his claim the counterpart of a lease alleged to have been executed by the defendant. The defendant denied execution, but the Revenue Courts, both original and appellate, decided against him that the counterpart was genuine. The defendant then brought a suit in a Civil Court, asking for a declaration that the counterpart in question was not executed by him, and was not a genuine document. *Held* that the decision of the Revenue Courts could not operate as *res judicata*, such Courts having no jurisdiction to try the subsequent suit, and s. 13 of the Code of Civil Procedure being exhaustive on the subject of what constitutes a *res judicata*. *Gokul Mandal v. Poddannud Singh* (1902), 6 C. W. N. 823, referred to *Rai Krishan Chand v. Mahadeo Singh*, Weekly Notes, 1901, p. 49, distinguished. *Gokul Mandal v. Poddannud Singh* (1902) I. L. R. 25 All. 138

42.—Jurisdiction—Decision of Revenue Court, effect of—Civil Procedure Code (Act XIV of 1892), s. 13—Under s. 13, Civil Procedure Code, a decree in a previous suit cannot be pleaded as *res judicata* in a subsequent suit, unless the Judge by whom it was made had jurisdiction to try and decide, not only the particular matter in issue, but also the subsequent suit itself in which the issue is

DIGEST OF CASES.

RES JUDICATA—continued.

8 COMPETENT COURT—continued.

(c) REVENUE COURTS—concluded.

subsequently raised. In this respect this section goes beyond the law laid down in the *Duchess of Kingston's case* (1776), 2 Smith's Leading Cases, 104 Ed., p. 713. *Gopal Mondul v. Poddannud Singh* (1902) [s. c., I. L. R. 29 Calc., 707; L. R., 29 I. A., 186]

43.—Settlement Proceeding—Record of rights—Bengal Tenancy Act (VIII of 1885), Ch. II, ss. 103, 106—Civil Procedure Code (Act XIV of 1892), s. 13—Settlement Proceeding—Entry of rent—Procedure.—S. 103 of the Bengal Tenancy Act lays down that, during the pendency of the draft publication, any person affected by an entry in the record may raise an "objection" with regard to it, which the Revenue Officer is to "consider" and "dispute" or dispose of in a summary manner. From an order disposing of such an "objection" there would be no appeal and no second appeal, and the order cannot have the effect of *res judicata*. A "dispute" under s. 106 is to be "heard" and "decided" by the Revenue Officer under the procedure laid down in the Code of Civil Procedure for the trial of suits, and is subject to appeal and second appeal; and an order disposing of such a "dispute" will have the effect of *res judicata*. *Durga Kasi v. Nabin Kishore Choudhary* (1897), 1 C. W. N. 291, considered and explained. *KARAYALI v. JAPARALI* (1901) 5 C. W. N., 798

44.—Status of tenant and nature of holding—Bengal Tenancy Act (VIII of 1885), ss 104, cl. (2), 107—Civil Procedure Code (Act XIV of 1892), s. 13—During the preparation of the record of rights of an estate under s. 103 of the Bengal Tenancy Act by a Settlement Officer, the landlord put in a petition under s. 104, cl. (2), of the Act for settlement of rent of a certain tenant's holding. The tenant, notwithstanding the fact that notice was served upon him, did not adduce any evidence, and the Settlement Officer decided that the tenant was an occupancy *raiyat*, and fixed a fair and equitable rent for the holding. Against this decision of the Settlement Officer, no appeal was preferred to the Special Judge. Subsequently, a suit was brought in the Civil Court by the tenant to have the class to which he belonged and the nature of his holding, i.e., whether the rent was enhanceable or not determined. The defence of the tenant was that, under the provisions of s. 104, cl. (2), and s. 107 of the Bengal Tenancy Act, the decision of the Settlement Officer amounted to a decree, and the decision determined by that decision could only be re-opened on an appeal to the Special Judge. As no appeal was preferred, the decision became final, and the questions decided in that suit could not be re-opened in this suit. *Durga Kasi v. Nabin Kishore Choudhary* (1897), 1 C. W. N. 291, distinguished. *MANDAT* (1901) I. L. R. 29 Calc., 252; [s. c., 6 C. W. N., 238]

RES JUDICATA—concluded.**9. RELIEF NOT GRANTED.**

45.—*Civil Procedure Code (Act XIV of 1892), s. 13, Explan. III*—Application in execution for two reliefs—Order passed granting one relief and making no reference to the other—Subsequent application for the other relief; power of Court to grant.—A decree awarded a plaintiff possession of land, together with mesne profits. Plaintiff subsequently applied, in execution, for delivery of the land, and for the mesne profits. The Court passed an order on this application, directing plaintiff to be put into possession of the land, but making no reference whatever to the mesne profits. Plaintiff subsequently made another application for mesne profits, when it was contended that, inasmuch as the prayer for mesne profits had not been granted when the previous application was dealt with, it must be taken that the application for mesne profits had been refused, and that the matter was res judicata.

[L. L. R., 24 Mad., 681]

RESPONDENT.

—assent of—

See APPEAL TO PRINCE COUNCIL—CASES IN WHICH AN APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.

[5 C. W. N., 193]

—death of—

See ABATEMENT OF SUIT—APPEALS.

[L. L. R., 23 All., 22]

" 26 Bom., 203]

—objections by—

See APPEAL—OBJECTIONS BY RESPONDENT

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL.

RESTITUTION OF CONJUGAL RIGHTS.

See HINDU LAW—HUSBAND AND WIFE.

[L. L. R., 28 Calc., 751]

See LIMITATION ACT, 1877, SEC. II, ART. 35. [L. L. R., 25 Bom., 644]

—Husband and wife—Hindu law—Marriage—

Marriage—Proof of rites and ceremonies—In a suit for the restitution of conjugal rights, between

RESTITUTION OF CONJUGAL RIGHTS—concluded.

Hindus, the lower Courts having found that the defendant wife was of sufficient age to be fit to live with her husband as wife, it was held that the suit was maintainable, in spite of the fact that the wife was a minor, although in some cases it might be necessary to impose suitable terms on the husband. The Limitation Act is not intended to define or create causes of action, but only to prescribe the period within which they must be brought.

ceremonies necessary to constitute a legal marriage in the particular case were performed. The Court must find specifically what these rites and ceremonies are, and whether they were performed. Art. 35, S. 11, Act VIII of 1879.

[5 C. W. N., 195]

RESTRAINT.

See WRONGFUL RESTRAINT.

RESUMPTION.

See SERVICE TENURE.

EFFECT OF RESUMPTION.

—Effect on patta—Bengal Act VIII of 1879, s. 10—Resumption of lands included in a patta—Re-settlement with grantor of patta—Liability for rent—Parties—Held that, when lands are re-settled with the original holder or his heirs, s. 10 of Ben. Act VIII of 1879 does not, on its true construction, interfere with the contractual rights of a subordinate holder. The respondent having a permanent *ganti* tenure, subject to a fixed rent for the whole of it, under a patta executed in 1867, the Government resumed lands comprised in the tenure, and settled in 1884 with the heirs of the respondent's grantor in respect thereof. In an action by the appellant, as purchaser of the resumed and

2.—Enfranchisement—Enfranchisement of *inam* service land in name of office holder—Hindu law—Effect of enfranchisement—Liability in partition—Three items of land, numbered 6, 6, and 6, having

RESUMPTION—concluded.

EFFECT OF RESUMPTION—concluded.

second defendant, in March, 1889, established his right, as the her to the late incumbent, to this office of *karnam*, and the lands were, in November, 1889, ordered to be delivered to *R*, and were actually delivered to him in December, 1889. Before the actual delivery, *R* applied that the lands might be registered and a title-deed be issued in his name, as the Government were taking steps to enfranchise service *inams* in the district, and the *Inam* Commissioner, in November, 1889, notified to *R* that his name was included in the register. In January, 1890, second defendant's father, the eldest son of *R*, *karnam* in favour of his grandson, second defendant, who was duly appointed by the Collector, and in the name of *R* The *Inam* Commissioner, in 1891, passed an order that items 6 and 7 had been "resumed and fully assessed." *R* had died at a date prior to this, and second defendant was holding the office. On a suit being instituted by plaintiff for partition *Held per BRASHYAM AYYANGAR, J*—That, when a personal *inam* is enfranchised by the imposition of a quit-rent, the resumption by Government simply consists of so much of the assessment or land not the assessment in excess of the quit-rent being resumed. Similarly, the enfranchisement of a service *inam* does not operate as a resumption and fresh grant by Government subject to the payment of a quit-rent, any more than it is so in the case of the enfranchisement of a personal *inam*. It stands on the same footing, so far as the family in which the village office is hereditary is concerned. The enfranchisement only converts the *inam* into ordinary property. *Narayana v Chengalammal, I L R, 10 Mad, 1*, followed *Venkata v Rama, I L R, 8 Mad, 249*, explained. *Venkata v Rama, Venkatarayadu v Venkata Ramayya, I L R, 15 Mad, 294*, dissented from *Per MOORE, J*—Even according to *Dharnipragada v Ramayya, I L R, 8 Mad, 249*, explained. *Venkata v Rama, I L R, 15 Mad, 294*, the plaintiff was entitled, as his son, to his share. As to items 6 and 7, there was no enfranchisement and no fresh grant or title-deed in favour of second defendant. They were liable to partition, and *R* was unnecessary, therefore, to decide whether *Narayana v Chengalammal, I L R, 10 Mad, 1*, or *Dharnipragada v Ramayya, I L R, 21 Mad, 47*, and *Venkata v Rama, I L R, 8 Mad, 249*, were correctly decided. *Venkata v Rama, I L R, 15 Mad, 294*, explained. *Per Curiam*—That items 6, 6 and 7 were liable to partition. *GUNNAIAN v KAMALESH AYYAR (1902)* [I L R, 28 Mad, 338]

RE-TRIAL.

See CRIMINAL PROCEDURE CODE, s. 437.
See CRIMINAL PROCEDURE.

[I L R, 29 Calc, 104]

DIGEST OF CASES.

RE-TRIAL—concluded.

See MAGISTRATE—RE-TRIAL OF CASES.
See NEW TRIAL.
See RE-HEARING.

See SESSIONS JUDGE, JURISDICTION OF—
ORDER FOR RE-TRIAL ON APPEAL;
[7 C. W. N., 801
POWERS ON REVISION.
[I L R, 28 Calc, 63]

RE-UNION.

See HINDU LAW—PARTITION—
REQUISITES FOR PARTITION;
[I L R, 30 Calc, 738
EFFECT OF PARTITION.
[I L R, 30 Calc, 725]

REVENUE.

See LAND-REVENUE.

REVENUE COURT.

See SANCTION FOR PROSECUTION—WHERE
SANCTION IS NECESSARY, OR OTHERWISE.
[I L R, 24 Mad, 121]

—JURISDICTION OF.—
See JURISDICTION OF CIVIL COURT—
REVENUE COURTS.

See JURISDICTION OF REVENUE COURT.
See RENT, SUIT FOR.

[I L R, 29 Calc, 485
See RES JUDICATA—COMPETENT COURT—
REVENUE COURTS.

—SUIT IN—
See JURISDICTION OF CIVIL COURT—RENT
AND REVENUE SUITS.

REVENUE OFFICER.

See BENGAL TENANT ACT, ss. 101 to 103.
[I L R, 30 Calc, 339
1890).

REVENUE RECOVERY ACT (I OF

—s. 6—

See MADRAS REVENUE RECOVERY ACT, s. 1,
5, 23 AND 41.
[I L R, 28 Mad, 621]

REVENUE SALES ACT (BENGAL),
1859.
See ACT—1859—XI.

REVERSIONER.*See HINDU LAW—*

ALIENATION—ALIENATION BY WIDOW;

REVERSIONERS;

WIDOW—POWER OF WIDOW—

POWER OF DISPOSITION OR ALIENATION;

DECREES AGAINST WIDOW, AS REPRESENTING THE ESTATE, OR PERSONALLY.

See LETTERS OF ADMINISTRATION.

[6 C. W. N., 912]

*See LIMITATION ACT, 1877, SCH. II, ART. 141.***REVIEW.***See CIVIL PROCEDURE CODE, S. 244—QUESTIONS IN EXECUTION OF DECREE.*

[5 C. W. N., 627]

See LIMITATION ACT, 1877—

S 5 AND SCH. II, ART. 173;

[I. L. R., 28 Bom., 485]

SCH. II, ART. 179—PERIOD FROM WHICH LIMITATION RUNS—WHERE THERE HAS BEEN A REVIEW.

See MINOR—REPRESENTATION OF MINOR IN SUITS. I. L. R., 29 Calo., 735*See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.* 5 C. W. N., 83*See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT I OF 1895), ss. 15, 19, 32 AND 33.* I. L. R., 30 Calo., 619*Grounds for review—In granting a review, the Court should not travel beyond the grounds mentioned in the application for review. PURNA CHANDRA SARKAR v. NIL MADHUB NANDI (1901)*

[5 C. W. N., 485]

REVISION—CIVIL CASES.*See MUNSIF.* I. L. R., 24 Mad., 335*See PRACTICE—CIVIL CASES—VAKIL AND COUNSEL.* I. L. R., 30 Calo., 986*See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT I OF 1895), ss. 15, 19, 32 AND 33.* I. L. R., 30 Calo., 619*See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.*

[I. L. R., 29 Calo., 773]

*See SUPERINTENDENCE OF HIGH COURT.***REVISION—CRIMINAL CASES.**

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[5 C. W. N., 866]

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[I. L. R., 28 Calo., 63]

1. GENERAL RULES FOR EXERCISE OF POWER.

1.—Accused not appealing—*Criminal Procedure Code (Act V of 1898), ss. 423, 439—High Court, power of, to deal with accused person not appealing—Conviction, setting aside of, of accused not appealing, while dealing with an appeal on behalf of persons appealing—The High Court has power, under s. 439 of the Code of Criminal Procedure, in a proper case, to deal with the case of accused persons not appealing against their conviction, while persons not appealing are referred by some*

3.—*Criminal Procedure Code, Ch. XII (Disputes as to Immovable Property)—Statute 24 & 25 Vic. cap. 104, s. 15—Criminal Procedure Code, ss. 145, 435, 439—Order of Magistrate in case of a dispute relating to immovable property—High Court's powers of revision—Held that the High Court cannot exercise revisional powers in respect of proceedings under Ch. XII of the Code of Criminal Procedure unless in a case where the Magistrate has acted without jurisdiction. Doulat Koor v. Ramewari Koori*

REVISION—CRIMINAL CASES— continued.

1. GENERAL RULES FOR EXERCISE OF POWER—concluded.

(1899), *I. L. R.*, 26 Cal., 625, followed. In the MATTER OF THE PETITION OF NATHU MAL (1903)

[*I. L. R.*, 24 All., 315

3.—Party having no right to present possession—*Criminal Procedure Code*, s. 145—No decision came to by Magistrate as to party in possession—Application for revision at in-

2 ACQUITTALS.

4.—District Magistrate's discretion to move Local Government against acquittal—Effect of order of acquittal on other persons charged, but not sent up for trial—*Criminal Procedure Code* (Act

the LOCAL GOVERNMENT, as against the petitioners only, who had not been tried, to be placed on their trial. Held that the District Magistrate should,

5.—Acquittal of accused, effect of, with regard to others similarly charged—Revival of proceedings against absent accused—*Indian Penal Code* (Act XLV of 1860), ss. 147, 341, 379.—Petitioners were charged, along with two others, with having committed certain offences under ss. 379,

REVISION—CRIMINAL CASES— continued.

2. ACQUITTALS—concluded.

341 and 147, *Indian Penal Code*; the latter, who were sent up by the police, were tried and acquitted, and the Magistrate remarked in his judgment that the case against the petitioners was not a true one. Held that, until this decision was set aside by higher authority, the petitioners could not be prosecuted; and the order of the Sessions Judge directing their prosecution was bad. *Panchu Singh v Umor Mahomed Sheikh* (1899), 4 C. W. N., 546, and *Bishun Das Ghosh v. King-Emperor* (1902), 7 C. W. N., 493, followed. *KEDAR NATH BISWAS v. ADHIN MANSI* (1903). 7 C. W. N., 711

3 COMMITMENTS.

6.—*Criminal Procedure Code* (Act V of 1898), ss. 209, 213, 215, 436—Order of discharge—Subsequent order of commitment—Revisional power of High Court—Where a Sessions Judge, under s. 436, ordered the commitment of an accused who had previously been discharged under s. 209, *Criminal Procedure Code*, by the Deputy Magistrate, on evidence which was unreliable and insufficient: Held that the High Court had authority to set aside the order of commitment on the merits of the case, and that the order was bad and should be set aside. The High Court, in the exercise of its powers of revision, can, on the merits of a case, set aside an order of commitment passed by a District Magistrate or Sessions Judge under s. 436, *Criminal Procedure Code*, where such order of commitment setting aside a previous order of discharge is made on insufficient or unreliable evidence. *PIRTHI CHAND LAL v. SAMPATIA* (1903)

[7 C. W. N., 327

4 DISCHARGE OF ACCUSED.

7.—*Criminal Procedure Code* (Act V of 1898), ss. 436, 440, 209—Preliminary inquiry—Improper discharge—Order for further inquiry or subsequent commitment to Sessions—Consideration of evidence on record—At a preliminary inquiry, a Magistrate before committing an accused person to the Sessions Court under s. 210 of the Code of Criminal Procedure should have sufficient grounds for doing so, and among such grounds may properly be placed a consideration as to whether, on the evidence before him, a conviction will be arrived

REVISION-CRIMINAL CASES-
continued.

4. DISCHARGE OF ACCUSED—concluded. .

the Code of Criminal Procedure, without considering the evidence on the record, which he thought he could not do without "prejudging the case, thus making it difficult for him to hear it with a jury." Held that the Sessions Judge's order was "set aside."

HARBANS SINGH v. FAKIR DAS (1902)

8.—Jurisdiction.—Revisional jurisdiction of High Court.—Criminal Procedure Code (Act V of 1898), ss. 423, 439.—Presidency Magistrate.—Discharge of accused person under s. 209 of Criminal Procedure Code (Act V of 1898).—Order of discharge set aside by High Court, and order made that accused be arrested and committed for trial at the Sessions of the High Court.—Practice—Procedure.—Under ss. 439 and 423 of the Criminal Procedure Code, the High Court has jurisdiction to set aside an order of discharge passed by a Presidency Magistrate, if such preliminary be necessary, and to direct that a person improperly discharged of an offence be arrested and forthwith committed for trial. The fact that, by s. 439 of the Criminal Procedure Code (Act V of 1898), the High Court in its revisional jurisdiction may exercise all the powers given to it as a Court of Appeal (by s. 423), except (see paragraph 4) the power of converting a finding of acquittal into one of conviction, seems to point to the conclusion that all other powers not expressly excluded may be exercised by the High Court as a Court of Revision. **EMPEROR v. VARIJANDAS (1902)**

5. VERDICT OF JURY, AND MISDIRECTION.

9.—Trial by jury.—Procedure.—Delivery of verdict.—Verdict, partial record of.—Criminal Procedure Code (Act V of 1893), ss. 300, 301, 303.—Prejudice.—New trial.—Here, after the delivery of an unanimous verdict of the jury, convicting the accused of the charge of rioting in connection with certain land and the crops thereon, possession of which was claimed by the complainant as well as by the accused, the foreman of the jury attempted to add that "the land and the crops are all theirs" (meaning that they belonged to the accused), but was stopped by the Sessions Judge on the ground that the verdict was quite clear in its terms, and it was therefore unnecessary to say more. The jury at the words the foreman were very much being seriously prejudiced by the procedure adopted by the Sessions Judge, there should be a new trial. NARAYAN CHANGA C. EMPROSE (1902)

[I. L. R., 30 Calc. 485]

REVISION—CRIMINAL CASES—
continued.

8. MISCELLANEOUS CASES.

10.—Contempt of Court—Criminal Procedure Code, ss. 434, 476—Power of High Court to revise an order under s. 434, Cr. P. Code, under s. 476, Cr. P. Code, to set aside Criminal Procedure; but such power should not be exercised where the Court below has arrived at a judicial opinion on evidence that there is ground for inquiring into an offence referred to in s. 195, merely because the High Court disagrees with that opinion. IN THE MATTER OF THE PETITION OF ALANDAR HUSAIN (1901). I. L. R., 23 All. 249

II. Criminal Procedure Code
(Act V of 1898), ss. 439, 476—Jurisdiction of
High Court to interfere where a Court has taken
action under s. 476 of the Criminal Procedure
Code—Where a Court has taken action under s. 476
of the Code of Criminal Procedure, the High Court,
as a Court of Revision, has no power to interfere
under s. 439. The reasons for the decision in *Queen-
Empress v. Srinivasulu Naidu*, *I. L. R.*, 21 Mad.,
129, are not applicable to the amended Code.
BRATHLOATHAN v. KING-EMPEROR (F.B., 1902)
[*I. L. R.*, 28 Mad. 88]

12.—Dispute as to possession of immovable property—Criminal Procedure Code, ss. 145 (5) and 435 (3)—Order of Magistrate on dispute as to possession of immovable property—Jurisdiction of High Court.—The order to which finality is given under ss. 145 (5) and 435 (3) of the Code of Criminal Procedure must be an order which not only purports to be, but is in reality, an order under s. 145, and has been passed with jurisdiction. Where the Court has exceeded its jurisdiction in making the order, it is null and void, and the High Court, in the exercise of its revisional powers, is competent to interfere with it. *Bur-buluddh Narain Singh v. Luckhessar Prasad Singh* (1893), *I. L. R.* 26 Cal. 138; *In re*

having passed an order seemingly under s. 118, added, as it were, as an appendix to this order:—
 "Basa Ahir put in possession under s. 145, Code of Criminal Procedure"—it was held that this order, passed without any of the procedure prescribed by s. 145 being adopted, was more than an irregularity, and was an order passed without jurisdiction, and liable to revision by the High Court.
Moohak Sower v. Aarain Darg (1900), 1 L. R. 27 Cal., 931, and *Saker Doodh v. Ram Fargash Singh (1903)*, 7 C. W. N. 174, referred to.
MAHABO GOSWAMI v. BISHU (1903)

REVISION—CRIMINAL CASES— continued.

6. MISCELLANEOUS CASES—continued.

13.—Notice to accused—*Criminal Procedure Code (Act V of 1898), ss. 435, 437*—Petition by complainant for re-trial of accused after discharge—No notice to accused—Order by Sessions Judge, directing further inquiry—Revision petition to High Court—Jurisdiction—Necessity for notice before order passed to prejudice of accused.—A person charged with having committed criminal breach of trust was discharged, whereupon the complainant petitioned the Sessions Judge, under s. 435 of the Code of Criminal Procedure, to direct a re-trial of the case. Notice of the application was not given to the accused. The Sessions J.

against that order: *held* that it was competent to the High Court to revise the order; and that, without laying down a general rule that the necessity of such an application renders must be is case or that there was any reason why the general rule should

14.—Sanction for prosecution—*Practice—Criminal Procedure Code, s. 195*—Sanction to prosecute—Application for sanction refused by Magistrate—Independent application subsequently

remedy in the Court below. *CHUNNI LAL (1902)*. I. L. R., 25 All., 128

15.—Practice—*Procedure—Sanction to prosecute—Stay of criminal proceedings pending disposal of civil suit—High Court—Criminal Procedure Code (Act V of 1898), ss. 439, 195*, exercise of the Criminal interfere under s. (Act V) person for the offences referred to in that section.

REVISION—CRIMINAL CASES— concluded.

6. MISCELLANEOUS CASES—concluded.

The High Court in this case refused to stay criminal proceedings directed by a subordinate Court under s. 476 of the Criminal Procedure Code (Act V

16.—*Criminal Procedure Code (Act V of 1898), ss. 435, 439*—Jurisdiction of High Court, under Criminal Procedure Code, to revise order according sanction which has been granted by a Civil Court.—The High Court has no jurisdiction, under ss. 435 and 439 of the Code of Criminal Procedure, to revise an order passed by any Court other than a Criminal Court under cl. (b) or (c) of sub-s. (1) of s. 195 of the Code of Criminal Procedure, according sanction to institute a prosecution; or an order passed under sub-s. (6) of s. 195 revoking or refusing to revoke a sanction which has been given, or granting a sanction which has been refused. It may be open to the High Court, under s. 622 of the Code of Civil Procedure, to revise such proceedings of a Civil Court, in cases which come within the terms of that section. *IN RE CHENNAIGOUND (1902)*. I. L. R., 28 Mad., 189

REVIVAL.

See LIMITATION ACT, 1877, SCH. II, ART. 180. I. L. R., 30 Cal., 979

—revival of criminal case—

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.

See DISCHARGE OF ACCUSED—REVIVAL OF PROCEEDINGS.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—STRIKING OFF PROCEEDINGS. 8 C. W. N., 923

REVOCATION.

—of sanction—

See SANCTION FOR PROSECUTION—REVOCATION OF SANCTION.

—of will—

See HINDU LAW—WILL—REVOCATION OF WILL.

RIGHT OF APPEAL.

See SMALL CAUSE COURT, MOSTSILL—JURISDICTION—MISTAKE OF FACTS. (I. L. R., 25 Bom., 85

REVISION—CRIMINAL CASES— continued.

4 DISCHARGE OF ACCUSED—concluded.

the Code of Criminal Procedure, without considering

made on full consideration of the merits of the case, as disclosed by the evidence before the Magistrate.
HARRAN SINGH v. FAHIR DAS (1903)

[7 C. W. N., 77]

8.—*Jurisdiction—Revisional jurisdiction of High Court—Criminal Procedure Code (Act V of 1898), ss. 423, 439—Presidency Magistrate—Discharge of accused person under s. 209 of Criminal Procedure Code (Act V of 1898)—Order of discharge set aside by High Court, and order made that accused be arrested and committed for trial at the Sessions of the High Court—Practice—Procedure.—Under ss. 439 and 423 of the Criminal Procedure Code, the High Court has jurisdiction to set aside an order of*

one of conviction, seems to point to the conclusion that all other powers not expressly excluded may be exercised by the High Court as a Court of Revision.
EMPEROR v. VARIVANDAS (1902)

[1 L. R., 27 Bom., 84]

5. VERDICT OF JURY, AND MISDIRECTION.

9.—*Trial by jury—Procedure—Delivery of verdict—Verdict, partial record of—Criminal*

by the accused, the foreman of the jury attempted to add that "the land and the crops are all theirs" (meaning that they belonged to the accused), but was stopped by the Sessions Judge on the ground that the verdict was quite clear in its terms, and it was therefore unnecessary to hear anything further from them: *Held* that it was undesirable to stop the jury at such a stage of the proceedings; that the words the foreman attempted to add to the verdict were very material; and that the accused having been seriously prejudiced by the procedure adopted by the Sessions Judge, there should be a new trial.
NARAYAN CHANOA v. EMPEROR (1902)

[1 L. R., 30 Calc., 485]

REVISION—CRIMINAL CASES— continued.

6. MISCELLANEOUS CASES.

10.—*Contempt of Court—Criminal Procedure Code, ss. 439, 476—Power of High Court to revise an order under s. 476—Circumstances under which such power should or should not be exercised.—The High Court has power, in revision, to set aside an order passed by a Civil, Criminal or Revenue Court under s. 476 of the Code of Criminal Procedure; but such power should not be exercised where the Court below has arrived at a*

11.—*Criminal Procedure Code (Act V of 1898), ss. 439, 476—Jurisdiction of High Court to interfere when a Court has taken action under s. 476 of the Criminal Procedure Code.—Where a Court has taken action under s. 476 of the Code of Criminal Procedure, the High Court, as a Court of Revision, has no power to interfere under s. 439. The reasons for the decision in *Queen-Empress v. Srinivasulu Naidu, I. L. R., 21 Mad., 124*, are not applicable to the amended Code.
BRANHOZI ATHAN v. KING-EMPEROR (23, 1902)
[1 L. R., 26 Mad., 98]*

12.—*Dispute as to possession of immovable property—Criminal Procedure Code, ss. 145 (5) and 435 (3)—Order of Magistrate on dispute as to possession of immovable property—Jurisdiction of High Court.—The order to which finality is given under ss. 145 (5) and 435 (3) of the Code of Criminal Procedure must be an order which not only purports to be, but is in reality, an order under s. 145, and has been passed with jurisdiction. Where the Court has exceeded its jurisdiction in making the order, it is null and void, and the High Court, in the exercise of its revisional powers, is competent to interfere with it. *Bur-buluddh Narain Singh v. Luckmewar Prasad Singh (1898), I. L. R., 26 Calc., 189; In re Pandurang Govind (1900), I. L. R., 24 Bom., 527; and Agra Bank v. Leishman (1894), I. L. R., 18 Mad., 21*, referred to. Where a Magistrate, under circumstances which would apparently have justified his taking action under s. 145 of the Code of Criminal Procedure, took action in fact under s. 107, and, having passed an order seemingly under s. 118, added, as it were, as an appendix to this order:—*"Bisa Ahir put in possession under s. 145, Code of Criminal Procedure"*—it was held that this order, passed without any of the procedure prescribed by s. 145 being adopted, was more than an irregularity, and was an order passed without jurisdiction, and liable to revision by the High Court.
Mohesh Sower v. Narain Bag (1900), I. L. R., 27 Calc., 381, and Sakor Dattad v. Ram Pargash Singh (1903), 7 C. W. N., 174, referred to.
MAHADEO KUNWAR v. BISH (1903)
[1 L. R., 25 All., 537]*

REVISION—CRIMINAL CASES—

continued.■ MISCELLANEOUS CASES—*continued.*

13.—Notice to accused—*Criminal Procedure Code (Act V of 1898), ss. 435, 437*—Petition by complainant for re-trial of accused after discharge—No notice to accused—Order by Sessions Judge, directing further inquiry—Revision petition in High Court—Jurisdiction—Necessity for notice before order passed to prejudice of accused.—A person charged with having committed criminal breach of trust was discharged, whereupon the complainant petitioned the Sessions Judge, under s. 435 of the Code of Criminal Procedure, to direct a re-trial of the case. Notice of the application was not given to the accused. The Sessions Judge, acting under s. 437, ordered a further inquiry to be made. On a criminal revision petition being preferred by the accused in the High Court against that order: Held that it was competent to the High Court to revise the order; and that, without laying down a general rule that the omission to give notice of such an application renders an order under the section bad, the order must be set aside, as it had not been shown that in this case there was any difficulty in giving notice, or that there was any reason why the general rule should not be followed that an order should not be made to a man's prejudice without giving him an opportunity for being heard. *ALAGIRISAMY NAIDU v. BALAKRISHNASAMI MUDALIAR (1902)*

[I. L. R., 28 Mad., 41]

14.—Sanction for prosecution—*Practice—Criminal Procedure Code, s. 195*—Sanction to

REVISION—CRIMINAL CASES—

*concluded.*6. MISCELLANEOUS CASES—*concluded.*

tion with which the criminal charges were made had been decided. *IN RE BAL GANGADHAR TILAK (1902)*

[I. L. R., 28 Bom., 785]

16.—*Criminal Procedure Code (Act V of 1898), ss. 435, 439*—Jurisdiction of High Court, under Criminal Procedure Code, to revise order according sanction which has been granted by a Civil Court.—The High Court has no jurisdiction, under ss. 435 and 439 of the Code of Criminal Procedure, to revise an order passed by any Court other than a Criminal Court under cl. (b) or (c) of sub-s. (f) of s. 195 of the Code of Criminal Procedure, according sanction to institute

REVIVOR.

See LIMITATION ACT, 1877, SCH II, ART. 180 . . . I. L. R., 30 Calc., 879

—revival of criminal case—

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.

See DISCHARGE OF ACCUSED—REVIVAL OF PROCEEDINGS.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—STRIKING OFF PROCEEDINGS . . . 8 C. W. N., 823

REVOCATION.

—of sanction—

See SANCTION FOR PROSECUTION—REVOCATION OF SANCTION.

—of Will—

See HINDU LAW—WILL—REVOCATION OF WILL.

RIGHT OF APPEAL.

See SMALL CAUSE COURT, NONSUET—JURISDICTION—MISSE PROFITS.

[I. L. R., 25 Bom., 85]

15.—Practice—Procedure—

Sanction to prosecute—Stay of criminal proceedings pending disposal of civil suit—High Court—Criminal Procedure Code (Act V of 1898), ss. 435, 195, 4—exercise of the Criminal interfere under s. 470 of the Criminal Procedure Code (Act V of 1898), directing the prosecution of any person for the offences referred to in that section.

RIGHT OF OCCUPANCY.

—acquisition of—

See LANDLORD AND TENANT—EJECTMENT
—NOTICE TO QUIT.

[6 C. W. N., 189]

—limitation of suit to recover possession—

See BENGAL TENANCY ACT, SCH. III,
ART. 3.

—transfer of—

See POSSESSION—SUITS FOR POSSESSION.
[7 C. W. N., 607]

TRANSFER OF RIGHT.

1.—Landlord's consent—Sale of occupancy holding in execution of money-decree—Landlord's consent, effect of.—A sale, in execution of a money-decree, of an occupancy holding not transferable by local custom or usage, is valid and effectual, if the sale is held with the consent of the landlord. In principle, there is no difference between the case of a voluntary sale made by the *raiyat* and an involuntary sale had by the Court, if such sale is consented to by the landlord. *ANANDA DAS v. RUTNAXAR PANDA* (1903) 7 C. W. N., 572

2.—Proof of local usage—Occupancy holding—Local usage to transfer—Where the question was whether an occupancy holding was transferable, and the lower Appellate Court found as follows: "There is abundant evidence on the record to show that such lands are actually sold in the locality, and the *kobalas* filed in this case support this fact." Held that this did not amount to a finding of a local usage. *DINO NATH GHOSH v. NOBIN CHANDER GHOSH* (1900) 8 C. W. N., 181

3.—Occupancy-holding—Transferability—Local usage, proof of.—A transfer of an occupancy-holding cannot be justified by local usage which is still "growing up." The usage should have fructuated into maturity. To establish a usage as to the transferability of an occupancy holding, it must be shown that such transfers have been made with the knowledge and without the consent of the landlord, and that no successful objection to such transfer has been made by the landlord. *Edward Dalqiesh v. Sheikh Gossaffar Hussein* (1899), 3 C. W. N., 21, followed. *Dino Nath Ghosh v. Nobin Chander Ghosh* (1900), 8 C. W. N., 181, referred to. *RAMNURI SINGH v. JUBBAR ALI MEAH* (1902)

[6 C. W. N., 861]

RIGHT OF SUIT.

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| 1. INTEREST TO SUPPORT RIGHT | Col. 936 |
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| 7. OBSTRUCTION OF PUBLIC HIGHWAY | " " |
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See ACT—1863—XX, s. 18

[I. L. R., 24 Mad., 219]

See ASSIGNMENT OF CHOSE IN ACTION.

[I. L. R., 28 Mad., 284]

See BENAMI TRANSACTION—

GENERAL CASES—SUIT TO RECOVER
POSSESSION OF PROPERTY;

[I. L. R., 30 Cal., 285]

CERTIFIED PURCHASERS—CIVIL
PROCEDURE CODE, 1882, s. 317.

See BENGAL REGULATION VIII of 1819, s. 6.
[7 C. W. N., 111]

See CERTIFICATE OF ADMINISTRATION.

See CIVIL PROCEDURE CODE—

s. 244;

s. 257A.

[I. L. R., 25 Bom., 352]

See COMPROMISE—

CONSTRUCTION, ETC., OF DEEDS OF
COMPROMISE;

[7 C. W. N., 156]

REMEDY ON NON-PERFORMANCE OF
COMPROMISE, 5 C. W. N., 388

See CONTRIBUTION, SUIT FOR—

PAYMENT OF JOINT DEBT BY ONE
DEBTOR; I. L. R., 28 Mad., 373

JOINT WRONG-DOERS

[5 C. W. N., 393]

See DAMAGES—SUITS FOR DAMAGES—
BREACH OF CONTRACT.

[7 C. W. N., 108]

See DECLARATORY DECREE, SUIT FOR—
ADOPTION . . . I. L. R., 30 Cal., 613

See HINDU LAW—

ALIENATION—ALIENATION BY
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ATIONS, AND WASTE.

[5 C. W. N., 445]

REVERSIONERS.

[I. L. R., 23 Cal., 280]

See JURISDICTION OF CIVIL COURT.

See MADRAS RENT RECOVERY ACT, ss. 15,
17 AND 18 . . I. L. R., 25 Mad., 603

See MALICIOUS PROSECUTION.

See MISHN PROFITS—ASSESSMENT IN EX-
ECUTION, AND SUITS FOR MISHN
PROFITS . . I. L. R., 24 All., 361

See MORTGAGE—POWER OF SALE.

[I. L. R., 25 Mad., 108]

RIGHT OF SUIT—continued.**See PARTIES—**

PARTIES TO SUITS—MORTGAGES,
SUITS CONCERNING;

[5 C. W. N., 423

SUITS BY SOME OF A CLASS AS RE-
PRESENTATIVES OF CLASS.

**See PRINCIPAL AND AGENT—AUTHORITY
OF AGENTS.** I. L. R., 30 Calc., 207

**See PROBATE—OPPOSITION TO, AND RE-
VOCATION OF, GRANT.**

[5 C. W. N., 383

**See PUBLIC DEMANDS RECOVERY ACT
(BEN. ACT VII OF 1880).**

[I. L. R., 28 Calc., 73

**See PUBLIC DEMANDS RECOVERY ACT
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[I. L. R., 28 Calc., 94

See RAILWAY COMPANY

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See RAILWAYS ACT, ss. 7, 10 and 11.

[I. L. R., 25 Mad., 632

**See RELINQUISHMENT OF, OR OMISSION TO
SUE FOR, PORTION OF CLAIM.**

See RENT, SUIT FOR.

[7 C. W. N., 720

See RESTITUTION OF CONJUGAL RIGHTS.

[I. L. R., 28 Calc., 37

**See SALE FOR ARREARS OF RENT—SUE-
PLUS PROCEEDS OF SALE.**

[7 C. W. N., 553

**See SALE FOR ARREARS OF REVENUE—
SETTING ASIDE SALE—PARTIES**

[7 C. W. N., 377

**See SALE IN EXECUTION OF DECREE—
SETTING ASIDE SALE—RIGHTS OF
PURCHASERS—RECOVERY OF PURCHASE-
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See SPECIFIC RELIEF ACT, s. 9.

[6 C. W. N., 616

—after conviction of defendant—

**See DAMAGES—SUITS FOR DAMAGES—
TORT.** 6 C. W. N., 915

—against witness—

See DEFAMATION.

[I. L. R., 28 Calc., 784

—by co-sharer landlord—

**See CO-SHARERS—SUITS BY CO-SHARERS
WITH RESPECT TO THE JOINT PROPERTY
—HABUSIYAT.** 7 C. W. N., 670

—by creditor—

See RECEIVER.

[I. L. R., 30 Calc., 937

RIGHT OF SUIT—continued.

—for compensation—

**See LAND ACQUISITION ACT (I OF 1894),
ss. 11, 18, 31 and 33.**

[7 C. W. N., 538

—road and other cesses, sale for arrears
of—

**See PUBLIC DEMANDS RECOVERY ACT
(BENGAL ACT I OF 1895), ss. 10, 17, 21.**

[I. L. R., 28 Calc., 813

—to compel registration—

**See REGISTRATION ACT (III OF 1877), ss. 73
TO 77.** I. L. R., 24 All., 402

—to enforce agreement in satisfaction of
judgment-debt—

See CIVIL PROCEDURE CODE, s. 257A.

[6 C. W. N., 27

—to recover cess illegally levied—

**See MADRAS LOCAL BOARDS ACT, ss. 57,
64 and 149**

[I. L. R., 24 Mad., 114

—to set aside sale in execution of certi-
ficate—

**See PUBLIC DEMANDS RECOVERY ACT
(BEN. ACT I OF 1895)**

[I. L. R., 30 Calc., 619

1. INTEREST TO SUPPORT RIGHT.

*1.—Malabar law—Denial of uralan's title by
his co-uralan—Suit by one of two uralans without
consulting co-uralan—Maintainability of suit,
co-uralan being impleaded as defendant—One of
two co-uralans had for a considerable time denied the
title of the other uralan. The latter brought a suit*

2. CHARITIES AND TRUSTS

*2.—Civil Procedure Code, s. 539—Suit for a
declaration that certain property is endowed
property—S. 539 of the Code of Civil Procedure
pre-supposes the existence of a trust for the
administration of which it is necessary to make
provision. That section cannot apply to a suit in
which the object of the plaintiff is to obtain a decla-
ration that certain property is endowed property,
the fact of endowment being denied on the other
side.* JAMAL-UD-DIN v. MUKTABA HUSAIN (1903)

[I. L. R., 25 All., 631

RIGHT OF SUIT—continued.

3. DECREES.

3.—Suits to set aside decrees—*Civil Procedure Code (Act XIV of 1882), s. 244*—Separate suit to set aside decree and sale—*Jurisdiction—Fraud—Evidence Act (I of 1872), s. 44*—A suit to set aside a decree and the sale in execution thereof, and to recover the property sold, is maintainable,

Court in a different district. It may not be competent to the Court to set aside an execution sale.

Thakoor v. Bhujhun Jha (1874), 22 W.R., 213, referred to. *Abdul Mazumdar v. Mohamed Gazi (1894), I. L. R., 21 Calc., 605*; *Pran Nath Roy v. Mohesh Chandra Moitra (1897), I. L. R., 24 Calc., 546*, and *Srimati Nistarini Dasi v. Rai Nundo Lal Bose (1899), 3 C. W. N., 670*, followed. *KEDAR NATH MUKHERJEE v. PROSONNA KUMAR CHATTERJEE (1901), 5 C. W. N., 559*

4.—Decree *ex parte*—Execution sale—*Fraud—Civil Procedure Code (Act XIV of 1882), s. 108*—Effect of order rejecting previous application to set aside the decree, where the plaintiff had not appealed from such order.—The defendants sued the plaintiff for arrears

and obtained an order to set aside the decree and the sale in execution, on the ground that he had no interest in the land, in respect of which the arrears of rent were alleged to be due, and the decree and sale had been obtained by false returns of summons and of processes in execution, and were fraudulent and void. The defendant objected that

4. FRAUD.

5.—Decree, *ex parte*—Sale in execution of *ex parte* decree—Rejection of applications to set aside decree and sale in execution—*Civil Procedure Code (Act XIV of 1882), s. 13, 108, 311*—Subsequent suit to set aside decree and sale on ground of fraud—Omission to appeal from orders of rejection.—In a suit to set aside an *ex parte* decree and a sale in execution of such decree, as illegal, fraudulent and collusive, the allegations made in the plaint were clearly an attack, not on the regularity

RIGHT OF SUIT—continued.

4. FRAUD—concluded.

not have been determined on applications under those sections. *KHAGENDRA NATH MAHATA v. PRAN NATH ROY (1902)*

[*I. L. R., 29 Calc., 385*;
s.c., 5 C. W. N., 473;
I. L. R., 29 I. A., 60

6.—Decree obtained by fraud, setting aside of—

decree brought an administration suit, which sought incidentally to set aside certain leases, which the executors of the estate had granted to themselves, of lands situated without the jurisdiction of the Original Side of the High Court. Held that the suit was not a suit for land, and that the

5. INJURY TO ENJOYMENT OF PROPERTY.

7.—Tenants-in-common, rights of, against each other—Trespass—Exclusion from common property.—Laying a drain in land, and the incidental temporary interference with the soil necessary for that purpose, cannot be regarded as an ouster or destruction or an act of waste, and will not entitle a tenant-in-common of the land to maintain an action

RIGHT OF SUIT—continued.**5. INJURY TO ENJOYMENT OF PROPERTY—concluded.**

against another tenant-in-common. **MOHANCHAND NEMCHAND GUJAR v. ISAKHAI TANAJI** (1900)

[I. L. R., 25 Bom., 248]

6. MORTGAGE

8.—Transfer of Property Act (IV of 1882), s. 92—Decree for redemption—Omission to ex-

[I. L. R., 25 Bom., 248]

7. OBSTRUCTION OF PUBLIC HIGHWAY.

9.—Public way, obstruction of—Damage peculiar to plaintiff—Special damages—An action for obstructing a public way is not maintainable if no damage peculiar to the plaintiff is proved. Mere

8. POSSESSION, SUITS FOR.**9. PRE-EMPTION.**

11.—Compromise of suit for pre-emption, by means of which property is transferred—Suit for pre-emption, based on decree in such suit—Held that no suit for pre-emption will lie, the basis of which is a decree for pre-emption in another suit.

ABDUL RAZZAQ v. MUMTAZ HUSAIN (1903)

[I. L. R., 25 All., 334]

RIGHT OF SUIT—concluded.**10. SALE IN EXECUTION OF DECREE.**

12.—Recovery of purchase-money—Civil Procedure Code (Act XIV of 1882), s. 315—Execution sale—Absence of interest of judgment-debtor—Suit by purchaser, to recover purchase-money—Right of suit—Cause of action—A pur-

[I. L. R., 25 All., 334]

13.—Suit for confirmation of prior sale—Decree transferred to Collector for execution—Sale held by Collector, but afterwards set aside—Purchase by one joint decree-holder in his own name—Suit by auction-purchaser to have the sale confirmed—Muthara Das and Gajpal Lal held a joint decree for money against Jamma Prasad. Muthara Das applied in his own name for execution of the joint decree, and certain property of the

PRASAD (1903) [I. L. R., 25 All., 335]

RIGHT OF WAY.

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL
[5 C. W. N., 31]

See POSSESSION, ORDER OF CRIMINAL COURT as to—DISPUTES as to RIGHT OF WAY, WATER, ETC.

See WRONGFUL RESTRAINT.

[5 C. W. N., 433]

—Right of private way, suit for—Special damage, proof of, whether necessary—In a suit where a right of way is claimed, which is not a right

RIGHT OF WAY—concluded.

of way by the public but a private right of way and an easement or right by prescription, the question as to whether or not there has been proof of special damage is immaterial. *BAJI NATH SINGH v. TETAI CHOWDARY* (1901) . 6 C. W. N., 187

RIGHT TO APPEAR.

See *MOOKTEAR* . 7 C. W. N., 524

See *MURDER—APPOINTMENT AND APPEARANCE.*

See *PRACTICE—CIVIL CASES—*

COUNSEL;

VAKIL AND COUNSEL.

See *SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.*

[7 C. W. N., 843]

RIGHT TO USE OF WATER.

See *EASEMENT.*

[I. L. R., 30 Calc., 1077]

See *LANDLORD AND TENANT—NATURE OF TENANCY* . I. L. R., 28 Calc., 693

See *POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, ETC.* 5 C. W. N. 67

See *RAILWAYS ACT, ss. 7, 10 and 11.*

[I. L. R., 25 Mad., 632]

1.—*Riparian owners—Irrigation—Relative rights of upper and lower proprietors on the banks of a stream based on custom and prescription—Prescription—Custom—Injunction—Dams, construction of—Canal Dams—*

purpose of irrigating their agricultural land, by constructing dams every year during the Rainy season at a specified place, but allowing surplus water to run out by the sides of the dams. They

are not, any more entitled to the lands claimed, and that the injunction decreed in their favour was not unwarranted by law nor vitiated by vagueness and indefiniteness. *1-161 Perahad Singh v. Joy Nath Singh* (1897), I. L. R., 24 Calc., 285 distinguished. *Held, also*, that, the plaintiffs having applied for permission under s. 30 of the Civil Procedure Code, to sue on behalf of all parties having the same

RIGHT TO USE OF WATER—concluded.

interest in the suit, and the permission having been given in fact and notices issued accordingly, the mere fact that the order granting the permission was not recorded in the order sheet does not vitiate the proceedings. *Dhunput Singh v. Paresah Nath Singh* (1893), I. L. R., 21 Calc., 180, followed. *KALU KHARIB v. JAN MEAH* (1901)

I. L. R., 29 Calc., 100

2.—*Easement—Prescription—Prescriptive right to the use of water—Storage of water in another's tank for the purposes of irrigation—Presumption of right from long possession—*

Held that a presumption arose that this enjoyment had an origin, conferring a right to the use of the water. *Ramesur Persad Aarain Singh v. Koonj*

(1899), 3 M. & W., 405; *Birmingham, Dudley and District Banking Co. v. Ross* (1888), L. R., 3 Ch. D., 235; *Wood v. Wand* (1849), 5 Esch., 748;

RIOTING.

See *CRIMINAL PROCEDURE CODE, s. 437.*

[5 C. W. N., 72]

See *KIDNAPPING* . 6 C. W. N., 208

See *POLICE ACT (V of 1801), ss. 17, 19.*

[I. L. R., 28 Calc., 411]

See *PRIVATE DEFENCE, RIGHT OF*

[I. L. R., 24 All., 149]

See *UNLAWFUL ASSEMBLY.*

See *WARRANT OF ATTACHMENT*

[I. L. R., 29 Calc., 244]

—giving provocation with intent to commit—

See *RELIGION, OFFENCES RELATING TO.*

[I. L. R., 28 Mad., 554]

1.—*Landholder's responsibility—Owner or occupier of land on which riot takes place, liability of—Agent—Manager—Acts of commission as well as omission—Knowledge—Penal Code (Act XLV of 1860), s. 184—The accused was the sole proprietor of the land on which the riot took place, and he was standing close by, while the riot was going on, after*

RIOTING—continued.

which he absconded. The accused, who had no knowledge that a riot was likely to be committed, was convicted under s. 154 of the Penal Code, and fined. *Held* (RAMPINI and PRATT, JJ.) that a landlord is liable, under s. 154 of the Penal Code, for the acts of commission as well as omission, not only of himself, but of his agent or manager. Knowledge, on the part of the owner or occupier of the land, of the acts or intentions of the agent, is not an essential element of an offence under s. 154 of the Penal Code, and he may be convicted under that section, although he may be in entire ignorance of the acts of his agent or manager. *RAMPINI, J.*—There seems to be no ground for holding that s. 154 is intended in order to punish the landlord where his agent has not rendered himself liable to the criminal law, and that, when the agent has done so, then his liability is at an end. On the contrary, the provisions of the section impose on non-resident landholders and their agents the duty of maintaining the public peace and preventing unlawful assembly and riots on their estates, and render the former liable for any dereliction in the discharge of that duty.

L. N. D., 591; Queen-Empress v. Murnau Roy (1865), 3 W. R., Cr., 54; In the matter of Radha

charge of neglect assumes that the agent is not directly concerned in the commission of the offence. If he is so concerned, it ceases to be neglect—it is a crime.

ZAMUDDIN AHMED v. QUEEN-EMPRESS (1901)

[I. L. R., 28 Calc., 504;
s.c., 3 C. W. N., 771]

persons convicted, but to others, where such a

the law constituting the offences, as also to other circumstances of the case, that the prosecution was

RIOTING—concluded.

state and ill-advised, and should be discontinued. *EMRAH MEAN v. EMPRESS (1902)*

[7 C. W. N., 245]

4.—Right of private defence—*Act XLV of 1860 (Indian Penal Code), s. 147—Riot—Act XLV of 1860, ss. 96 et seqq.*—Of two parties, each of which claimed title to certain trees, one party went to cut down the trees and went armed with *lathis*, apparently with the intention of resisting anticipated opposition on the part of the other claimants. The other party

RIPARIAN PROPRIETORS.

See *MAKALDARS' COURTS ACT (Box. Act III of 1876), s. 4*

[I. L. R., 25 Bom., 395]

See *RIGHT TO USE OF WATER.*

[I. L. R., 29 Calc., 100]

RISK NOTE.

See *RAILWAYS ACT (IX of 1890), s. 72.*

[I. L. R., 30 Calc., 257]

RIVER.

—changing its course—

See *JURISDICTION—SUITS FOR LAND—RENT. I. L. R., 39 All., 232*

ROAD-CESS ACT.

See *BENGAL CESS ACT (BENGAL ACT IX of 1880).*

ROAD-CESS PAPERS.

See *EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—ROAD-CESS PAPERS.*

ROBBERY.

—*Penal Code (Act XLV of 1860), ss. 390, 391—Dacoity—Hurt caused to persons, not for the purpose of committing theft—“For that*

ROBBERY—concluded.

end," meaning of—*Splitting up of greater offence into smaller offences, in order to give himself*

and committed at the same time as a perfectly independent act, it does not amount to robbery, as defined in a 390, Indian Penal Code. *OTARUPPI MANJHI v. KAVILUPPI MANJHI* (1900)

[5 C. W. N., 372]

RULES TO SHOW CAUSE.

See PRACTICE—CRIMINAL CASES—RULE TO SHOW CAUSE.

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.

[5 C. W. N., 377, 383]

RULES MADE UNDER ACTS.

—Act XXIV of 1839, rules under—

See HIGH COURT, JURISDICTION OF—MADRAS—CIVIL

[I. L. R., 26 Mad., 266]

—Act XXIV of 1839, rules 20 and 31 of Agency, rules under—*Ganjam and Vizagapatam Agency Courts Act (XXIV of 1839)*—*Validity of Agency Rules Nos. XX and XXVI, passed under the Act*—*Application to High Court to direct Agent to review his decision*—*Maintainability*—In a suit in the Court of the Senior Assistant Agent to the Governor, in Vizagapatam, a decree was passed, in favour of the plaintiff, for possession of certain villages. On

appeals from decrees of his subordinates shall be

not to the High Court. Held that Rule No. XX is not *ultra vires*; and that Rule No. XXXI has no application to a case of this nature. *Maharaja of Jeypore v. Papayamma*, I L. R., 23 Mad., 529, referred to. *MAHARAJA OF JEYPORE v. JAMNABEN* (1901)

I. L. R., 24 Mad., 345

RULES MADE UNDER ACTS—concluded.

—Act XI of 1846, rule 35 of rules made under s. 3—

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL

[I. L. R., 25 Bom., 687]

—Act XV of 1882; rules made under s. 9—

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—RE-HEARING. I. L. R., 27 Bom., 569

—Bankruptcy Act (English) of 1883; rule 230 made under, does not apply to India—

See INSOLVENT ACT (11 & 12 VICT., c. 21), s. 40. I. L. R., 26 Bom., 623

—Ben. Act IX of 1880—

See BENGAL CESS ACT (BEN ACT IX OF 1880) I. L. R., 28 Cal., 687

—Bengal Tenancy Act (VIII of 1885), s. 189; rule 3 in Ch. I of rules made under—*Notice to quit, service of—Suit for ejectment against more than one tenant*—In a suit for ejectment against the under-raiyats, the notice to quit, when addressed to more persons than one, should be made by proclamation and beat of drum, according to Rule 3 of Ch. I of the rules made by the Government of Bengal, dated the 21st December, 1885. *TAMASHA BIBI v. MATRUHA NATH BHOWMIK* (1901)

[I. L. R., 28 Cal., 590; s.c., 8 C. W. N., 67]

—Court-fees Act—

See COURT-FEES ACT (VII OF 1870), ss. 28, 30 6 C. W. N., 785

—Legal Practitioners Act (XVIII of 1879), s. 27—

See PLEADER—REMUNERATION.

[7 C. W. N., 300]

—Legal Practitioners Act (XVIII of 1879), rules 31 and 35 of rules made under, for Madras—

See PLEADER—REMUNERATION.

[I. L. R., 26 Mad., 654]

—Railways Act—

See RAILWAY COMPANY.

[I. L. R., 23 All., 367]

—Scheduled Districts Act (XIV of 1874); rules 2 and 11 of Kumaon rules of 27th July, 1894—

See LEGAL PRACTITIONERS ACT, ss. 6 AND 8. I. L. R., 24 All., 348

—Stamp Act, 1899; rule 16 of Rules of 17th February, 1899—

See STAMP ACT, 1899, Sch. I, Art. 1 [I. L. R., 23 All., 21]

RULES OF BOARD OF REVENUE.**Darkhast rules—**

See GRANT—POWER TO GRANT
[I. L. R., 28 Mad., 742]

RULES OF HIGH COURT, BOMBAY.**rule 577—**

See SPECIFIC RELIEF ACT, s 45
[I. L. R., 27 Bom., 307]

RULES OF HIGH COURT, CALCUTTA.**Belchambers, rule 71—**

See SUPERINTENDENCE OF HIGH COURT—
CIVIL PROCEDURE CODE, s 612
[7 C. W. N., 843]

Belchambers, rule 605, is *intra vires*—

See INTEREST—MISCELLANEOUS CASES—
MORTGAGE . . . [6 C. W. N., 769]

Belchambers, rules 615, 617—

See APPEAL TO PRIVY COUNCIL—CASES IN
WHICH APPEAL LIES OR NOT—SUB-
STANTIAL QUESTIONS OF LAW.
[6 C. W. N., 41]

See PRACTICE—CIVIL CASES—REPORT OF
REGISTRAR. I. L. R., 28 Calc., 272

**rules of Appellate Side, Rule II,
Ch. III, Column 1—**

See HIGH COURT, JURISDICTION OF—
CALCUTTA—CIVIL
[I. L. R., 29 Calc., 486]

**rules made under s. 387 of the Code of
Civil Procedure—**

See SALE IN EXECUTION OF DECREE—
IMMOVABLE PROPERTY.
[5 C. W. N., 407]

**RULES OF PRESIDENCY SMALL
CAUSE COURT, MADRAS.**

—Rule 428 of the Rules of Procedure of the
Presidency Small Cause Court is not *ultra vires*
MUNSHAD KHUMARALI v. RANGA RAO (1901)
[I. L. R., 21 Mad., 654]

RYOT.

See RAYAT

B**SALARY.**

See ATTACHMENT—SUBJECTS OF ATTACH-
MENT—SALARY.

SALE.

See CERTIFICATE OF SALE.

See MORTGAGE—

POWER OF SALE.

SALE OF MORTGAGED PROPERTY.

See PARTITION—MISCELLANEOUS CASES.
[6 C. W. N., 129]

See PRACTICE—CIVIL CASES—SALE BY
REGISTRAR.

See REGISTRAR OF HIGH COURT—SALE BY
REGISTRAR.

See RE-SALE

—effect of misdescription of property—

See PRACTICE—CIVIL CASES—SALE BY
REGISTRAR I. L. R., 29 Calc., 420

—invalid—

See VENDOR AND PURCHASER—INVALID
SALES.

—irregularity in—

See SALE FOR ARREARS OF REVENUE—
SETTING ASIDE SALE—IRREGULARITY.

See SALE IN EXECUTION OF DECREE—
SETTING ASIDE SALE—IRREGULARITY.

—of adulterated food—

See CALCUTTA MUNICIPAL ACT (BEN. ACT
III OF 1893), s 495.
[I. L. R., 30 Calc., 643]

—of occupancy-holding—

See RIGHT OF OCCUPANT—TRANSFER OF
RIGHT . . . 7 C. W. N., 572

—of stamp—

See COURT-FEES ACT (VII OF 1870), s. 34.
[I. L. R., 30 Calc., 921]

—setting aside—

See CIVIL PROCEDURE CODE, s 211—
QUESTIONS IN EXECUTION OF DECREE.
[6 C. W. N., 279, 283]

See PRE-EMPTION—LOSS OR WAIVER OF
RIGHT . . . 5 C. W. N., 843

See PUBLIC DEMANDS RECOVERY ACT
(BEN. ACT VII OF 1880).
[I. L. R., 23 Calc., 73]

See PUBLIC DEMANDS RECOVERY ACT
(BEN. ACT VII OF 1880)—
ss 8, 10, 12; 5 C. W. N., 86
s. 19 . . . I. L. R., 23 Calc., 84

See RIGHT OF SCIT—SALE IN EXECU-
TION OF DECREE.

See SALE FOR ARREARS OF RENT—
SETTING ASIDE SALE.

See SALE FOR ARREARS OF REVENUE—
SETTING ASIDE SALE.

See SALE IN EXECUTION OF DECREE—SET-
TING ASIDE SALE

SALE FOR ARREARS OF RENT—

continued

3. INCUMBRANCES—continued.

application was made by him, to amend the previous application by substituting the name of the real field that he had purchased.

has notice of the incumbrance, was barred by limitation. *See* *Pratt v. Hazzar*, 28 Cal., 180.

4.—Notice of annulment—Bengal Tenancy Act (VII of 1885), s. 107.—Annulment of incumbrance, notice for—Notice, contents of—Notice, failure to serve—Notice, contents of—Notice, Act is not bad, although it does not specify the nature of the land held by the tenant or the person payable by him. Such a notice, if addressed to several tenants jointly, is not bad if it is served in accordance with the prescribed rules. *See* *Pratt v. Hazzar*, 28 Cal., 180.

5.—Bengal Tenancy Act (VII of 1885), s. 107.—Notice to annul incumbrance—Jurisdiction to issue such notice by Local Government—Collector—Bengal Tenancy Act, s. 8, of (16).—A Sub-Divisional Officer not specially appointed by the Local Government not discharge the functions of a "Collector" under s. 107 of the Bengal Tenancy Act has no power to receive an application, nor has he jurisdiction to issue an annulment of an incumbrance, under that section. *See* *Pratt v. Hazzar*, 28 Cal., 180.

6.—Tenant's mortgage—Bengal Tenancy Act (VII of 1885), s. 65.—Sale of a holding in execution of a decree for rent—Charge—Mortgage, and by to enforce mortgage—Transfer of Property Act (17 of 1882), s. 107.—Where, in execution of a decree for arrears of rent a mortgage was sold and purchased by the landlord, and the plaintiff, a mortgagee of the property, brought a suit to enforce the mortgage under the rent-decree, the mortgage was entitled to enforce the mortgage on payment of the money due under the rent-decree. Also, that the money due might be taken to have become absolutely due under the property, and it followed from s. 101, Transfer of Property Act, that the landlord was charge for rent, which was for his benefit, continued to subsist after his purchase. Also, that the plaintiff (mortgagee) might be regarded as a second mortgagee. *See* *Pratt v. Hazzar*, 28 Cal., 180.

7.—Tenant's sub-lease—Bengal Tenancy Act (VII of 1885), s. 107.—Landlord and under-tenant—Sub-lease given by a tenant without the landlord's consent—in a suit for arrears of rent.

DIGEST OF CASES.

SALE FOR ARREARS OF RENT—

continued.

3. INCUMBRANCES—continued.
sold for arrears of rent, whether necessary for the landlord to avoid the incumbrance so created—Bengal Tenancy Act, s. 22 (1) and 22 (2).—In a suit brought by the plaintiff (landlord) to recover the possession of a holding on the allegation that he had purchased it at a sale held in execution of a decree for arrears of rent obtained against the defendant.

1.—As much as the sub-letting of a holding in execution of registered instruments, and without the landlord's consent, it was invalid as against him (s. 22 (1) of the Bengal Tenancy Act) and therefore it was not necessary for him to follow the procedure prescribed by s. 107 of the Bengal Tenancy Act. The rights under such an under-tenant lease are not protected by s. 22 (1) of s. 22 of the Act. *See* *Pratt v. Hazzar*, 28 Cal., 180.

4 RIGHTS AND LIABILITIES OF PURCHASERS.

8.—Liability for rent—Bengal Tenancy Act (VII of 1885), s. 65.—Puts Regulation—Decree for rent for a period anterior to sale—There is no conflict between s. 65 of the Bengal Tenancy Act and s. 17 (5) of the Puts Regulation. Antecedent balances may be more personal debts, which can not be summarily recovered under the procedure prescribed by the Puts Regulation, but they may be also a charge on the land, and the tenant may be sold subject to them. Where the purchase of a holding is made for a period anterior to that of the decree in execution of which the tenant was sold, the purchase was not entitled to compensation from the old tenant against whom the rent-decree was obtained. *See* *Pratt v. Hazzar*, 28 Cal., 180.

9.—Sale in execution of decree for arrears—Liability of purchaser for rent for a period anterior to sale—Notification of sale for a tenure or holding was sold in execution of a decree for rent, with a notice that it was subject to the date of sale. Held that the purchaser was liable for the rent for a period anterior to the date of sale for such period. *See* *Pratt v. Hazzar*, 28 Cal., 180.

10.—*Pratt v. Hazzar*, 28 Cal., 180, distinguished. *See* *Pratt v. Hazzar*, 28 Cal., 180.

SALE FOR ARREARS OF RENT— continued.

4. RIGHTS AND LIABILITIES OF PUR- CHASERS—concluded.

10. —Sale notification, statement of annual rent of a tenure in—Deduction for *shadran mahakup*—Liability of purchaser.—The object of a sale notification is to make known to intending purchasers the rent for which they would be liable if they bought the property under sale. Where an application for execution of a decree for arrears of rent, and the sale notification, and the sale certificate, stated a certain amount as the annual rent payable, out of which a certain sum was kept in abeyance as *shadran mahakup*, and the balance was stated as the net annual rent: *Held* that the purchaser was entitled to the deduction of the amount stated in the sale proclamation on account of *shadran mahakup*. *SHANAT MONDUL v. SURJA KANT ACHARJA BAHADUR* (1903) 7 C. W. N., 388

5. SURPLUS PROCEEDS OF SALE

11.—Right of suit by an unregistered tenant for surplus sale-proceeds—Where, in execution of a decree for arrears of rent, the tenure was sold, and an unregistered tenant who was a purchaser of a share of the tenure after the date of the decree brought a suit for recovery of his share of the surplus sale-proceeds: *Held* that the suit was maintainable. *MATANGINI CHAUDRURANI v. SREENATH DAS* (1903)

[7 C. W. N., 552]

6 SETTING ASIDE SALE.

(a) GENERAL CASES.

12.—Mortgages—Civil Procedure Code (as amended by Act V of 1891), s 310A—Immovable property—Sale—Mortgages—A mortgagee of a tenure sold in execution of a decree for arrears of rent is entitled to the surplus proceeds of the sale.

execution of a decree for arrears of rent due in respect of it is entitled to make an application under s 310A of the Code of Civil Procedure, as being a "person whose immovable property has been sold,"

13.—Under-ryayat—Civil Procedure Code (as amended by Act V of 1891), s 310A—Immovable property—Sale—Whether an under-ryayat is entitled to make an application under that section—An under-ryayat is entitled to make an application under that section.

[I. L. R., 30 Cal., 453]

(b) RE-SALE.

14.—Rent Recovery Act (Madras Act VIII of 1856), s 33, 39—Sale of distrained property—Bid

SALE FOR ARREARS OF RENT— concluded.

6. SETTING ASIDE SALE—concluded.

(b) RE-SALE—concluded.

for one item sufficient to meet arrears of rent—Failure by bidder to complete purchase—Re-sale of item with others—Legality of sale—Satisfaction of arrears—A landholder distrained the property of a

to the amount of the arrear had been made for a portion of the property, the claim of the landholder

holder's proper remedy lay in taking proceedings against the defaulting purchaser: *Held* that the contention could not be upheld. An arrear of rent is only satisfied by a sale when the amount bid is paid, till when the debt subsists. *Held, further*, that notice of the second sale was not necessary under s 39 of the Rent Recovery Act (Madras), 1865 *SUBRAHMANYA AYYAR v. RANGAPPA KALAKKA THOLA UDATAR* (1900) I. L. R., 24 Mad., 307

SALE FOR ARREARS OF REVENUE.

| | |
|--|------|
| | Col. |
| 1. RIGHT TO SALE | 1004 |
| 2. INCUMBRANCES— | |
| ACT XI OF 1859 | 1005 |
| 3. PURCHASERS, RIGHTS AND LI-
ABILITIES OF— | |
| ACT XI OF 1859, s. 54. | " |
| 4. DEPOSIT TO STAY SALE | 1000 |
| 5. SETTING ASIDE SALE— | |
| (a) IRREGULARITY | " |
| (b) PARTIES | 1008 |

See MADRAS REVENUE RECOVERY ACT (Mad. Act II of 1864).

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.

[I. L. R., 25 All., 371]

—suit to set aside—

See COURT-REVENUE ACT (VII of 1870), Sec. II, Art. 17, cl. 3. 6 C. W. N., 157

1. RIGHT TO SALE

1.—Revenue Sale Law (Act XI of 1819), s. 10—Kist fixed by the Board of Revenue—Default of payment of one kist—Proprietor of estate,

SALE FOR ARREARS OF REVENUE

DIGEST OF CASES.

SALE FOR ARREARS OF REVENUE

4 DEPOSIT TO STAY SALE.

6.—*Act XI of 1859, s. 2—Act I of 1843—Mortgage—Part-proprietor—Mortgage law—Transfer of Property Act (IV of 1882), s. 72—Contract Act (IX of 1872), s. 70—Misjoinder—Civil Procedure Code (Act XIV of 1859), s. 578.*—A mortgagee of a share of an estate, Collectorate revenue and ceases payable by the defaulting mortgagor, deposited in the equity and good conscience, the mortgage was entitled to have the amount paid by him on account of revenue added to the amount of the original lien. *Doreen (1867)*, 11 Moo. I. A. 241, relied upon, that the mortgagee was entitled to a personal decree against the mortgagor for the amount paid on account of ceases, regard being had to s. 70 of the Contract Act (IX of 1872). *Smith v. Dinanath Mookerjee (1885)*, L. L. R. 12 Cal. 213, referred to. *UPENDRA CHANDRA MITTER v. TARA PRADIPNA MUKHERJEE (1903)*. I. L. R. 30 Cal. 784; [ac. 7 C. W. N., 609]

5 SETTING ASIDE SALE

(a) IRREGULARITY.

6.—*Description of property sold—Revenue Sale Law (Act XI of 1859), s. 6, 83 Sale of the residue of an estate—Sale notification—Inadequacy of price.*—Where a notification of sale under Act XI of 1859 described the property to be sold thus: "According to Act XI of 1859, the joint share except the separate share (to be sold). Save and except these, all other shares are exempted from sale. Held that, inasmuch as the law contemplates that the specification should be such as to inform intending purchasers what may be the precise property that is to be sold, the notification was wholly insufficient under the law. *Ananda Chandra Khatu v. Kishori Mohan Rai (1892)* 2 C. W. N. 479, followed. Where the property was sold at an inadequate price, and the sale notification was bad, a Court of Justice may reasonably and legitimately infer that it was due to this irregularity that the property was sold at an inadequate price. *Hem Chandra Chowdhary v. Sarat Kanti Datta (1902)* 6 C. W. N. 528

7.—*Notice—Sale—Revenue—Suits—Act XI of 1859, ss. 6, 67, 83—Bengal Act VII of 1854, s. 8—Certificate of sale—Onus of proof—Notice—Bengal Civil Code (Act I of 1859), s. 82—Evidence—Act (I of 1872), s. 113, 114, (e)—Presumption—Ben. Reg. VII of 1819 ss. 6, 13.*—In a suit to set aside a sale for arrears of revenue, the onus of proving that there has been

1. RIGHT TO SALE—concluded.

if entitled to pay the whole demand on the date fixed for the last kist.—An estate was sold for arrears of a few rupees, which amount was in arrear on the 12th January of a certain year, the date fixed by the Board of Revenue for one of the kists for the payment of revenue. It was contended that the proprietor was entitled to make the payment and pay plain

one year on the 28th of March, and the Revenue authorities had every right to sell the estate **KALI PRASUNTO BOSE v. KRISHNA CHANDRA (1903)** [7 C. W. N., 570]

2 INCUMBRANCES

Act XI of 1859.

2.—*Act XI of 1859, ss. 13, 14, 28, 29, 37, 84—Share of estate, sale of—Mortgage law—Rights of purchaser of share of estate—Mortgage—The sale of a share of an estate for arrears of revenue, under the provisions of Act XI of 1859, does not affect, wholly or in part, a valid mortgagee's interest of land in the estate, notwithstanding the fact that the mortgagee is a fractional proprietor. *Chowdhary (1892)*, B. L. R. (A. C.), 436, and *Madhub Chandra Chowdhary v. Promotho Nath Roy (1878)*, 20 W. R. 264, referred to. *Arzuz Hossein v. RAJENDRA BHAI (1903)**

3.—*Lease of land—Revenue Sale Law (Act XI of 1859), s. 37, cl. 4—Permanent building—The word "lease," in cl. 4, of Act XI of 1859, does not mean a lease from the samindar only. *ABRAHAM CHANDRA ROY v. NARAYENDU TALVEDAR (1903)* I. L. R., 30 Cal., 498*

3. PURCHASERS, RIGHTS AND LIABILITIES OF.

Act XI of 1859, s. 54

4.—*Meaning of the words "the purchaser shall not acquire any rights which were not possessed by the previous owner or owners."—The words "the purchaser shall not acquire any rights which were not possessed by the previous owner or owners", in s. 54 of Act XI of 1859, mean that the purchaser shall not acquire any rights not possessed by the previous owner or owners at some time or another, any right not possessed by the previous owner or owners at the date of the sale. *ANANDA PRASAD GHOSH v. RAJENDRA KUMAR GHOSH (1901)* [I. L. R., 28 Cal., 223; ac. 6 C. W. N., 375]*

SALE FOR ARREARS OF REVENUE

—continued.

II. SETTING ASIDE SALE—continued.

(a) IRREGULARITY—concluded.

irregularity or illegality in the preparation, service or posting of notice rests on the person who seeks to have the sale set aside. *Ashanullah Khan Bahadur v. Trilochan Bagchi* (1856), 1 L. R. 13 Calc., 197; and *Hurro Doyal Roy Chowdhury v. Mahomed Gazi Chowdhury* (1891), 1 L. R. 19 Calc., 699, distinguished. The fact that the inadequacy of price fetched at the sale was the result of the irregularity complained of may be either established by direct evidence or inferred, when such inference is reasonable, from the nature of the irregularity and the extent of the inadequacy of price. In a sale for arrears of revenue, after the certificate of

Lala Mobarak Lal v. The Secretary of State for India in Council (1855), 1 L. R., 11 Calc., 200; and *Bai Mokoond Lall v. Jirju Dhan Roy* (1852), 1 L. R., 9 Calc., 271, distinguished. Omission to serve notice under s. 7 of Act XI of 1859 can hardly render a sale for arrears of revenue liable to be annulled under s. 33 of that Act, especially after issue of the certificate of title to the purchaser. *Gobind Chandra Gangopadhyay v. Sheraunmista Bibi* (1882), 13 C. L. R., 1, and *Mahomed Akbar v. Raj Chander Roy* (1893), 1 L. R., 21 Calc., 351, referred to. *SHROUTTON SINGH v. NET LALL SARKI* (1902) [1 L. R., 30 Calc., 1; S.C., 6 C. W. N., 688]

8. — Act XI of 1859, ss. 3, 5,
Amangoudar v. ...

in appeal to Commissioner.—The expression "current year," in s. 6 of Act XI of 1859 is to be understood as referring to the year in which the latest

VII of 1863 from receiving evidence to prove that the notice under s. 6 of Act XI of 1859 was not served 30 days before the sale. The presumption arising under that section has reference only to the due service and posting of the notification. *Bai Mokoond Lall v. Jirjudhan Roy* (1852), 1 L. R., 9 Calc., 271, and *Lala Mobarak Lal v. The Secretary of State for India in Council* (1855), 1 L. R., 11 Calc., 200, followed. It is not open to a plaintiff in such a suit to make objection to the sale on a ground which had not been declared and specified in an appeal to the Commissioner. *Gobind Lal Roy v. Ramjann Misser* (1893), 1 L. R., 21 Calc., 70, followed. *JANNOTI CHOWDHURASTI v. SECRETARY OF STATE FOR INDIA IN COUNCIL* (1902)

[7 C. W. N., 377]

SALE FOR ARREARS OF REVENUE

—concluded.

6. SETTING ASIDE SALE—concluded.

(b) PARTIES.

9.—Act XI of 1859, s. 33.—Secretary of State, if a necessary party.—*Patnidar's right to set.*—In an action to set aside the sale of an estate for arrears of revenue, the Secretary of State is not a

FOR ARREARS OF ROAD-CESS.

See SALE FOR ARREARS OF CESS

SALE IN EXECUTION OF CERTIFICATE UNDER BENGAL ACT VII OF 1860.

See PUBLIC DEMANDS RECOVERY ACT, 1880 . . . 6 C. W. N., 503

SALE IN EXECUTION OF CERTIFICATE UNDER BENGAL ACT I OF 1895.

See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT I OF 1895), ss. 15, 19, 33 AND 33. 1 L. R., 30 Calc., 619

— what passes at such a sale—

See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT VII OF 1890), ss. 2, etc. [1 L. R., 29 Calc., 537]

SALE IN EXECUTION OF DECREE.

| | Col. |
|---|------|
| 1. IMMOVABLE PROPERTY . . . | 1010 |
| 2. ERRORS IN DESCRIPTION OF PROPERTY SOLD . . . | " |
| 3. JOINT PROPERTY . . . | 1012 |
| 4. MORTGAGED PROPERTY . . . | 1013 |
| 5. PURCHASERS, TITLE OF . . . | 1015 |
| 6. DISTRIBUTION OF SALE-PROCEEDS | 1016 |
| 7. INVALID SALES—
FRAUD . . . | 1020 |

SALE IN EXECUTION OF DECREE—*continued*

Col.

■ SETTING ASIDE SALE—

- (a) GENERAL CASES . . . 1020
 (b) IRREGULARITY . . . 1026
 (c) SUBSTANTIAL INJURY . . . 1030

9. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—

RECOVERY OF PURCHASE-MONEY . . . "

See APPEAL—EXECUTION OF DECREE—QUESTIONS IN EXECUTION.

[I. L. R., 25 Bom., 418
 " 23 All., 476]

See BENAMI TRANSACTION—CERTIFIED PURCHASERS—CIVIL PROCEDURE CODE, s 317.

[I. L. R., 23 All., 34]

See BENGAL TENANCY ACT—

s. 18, . . . 7 C. W. N., 388, 591
 ss 65 AND 188.

[I. L. R., 29 Calc., 219]

See HINDU LAW—WIDOW—DECREE AGAINST WIDOW, AS REPRESENTING THE ESTATE, OR PERSONALLY.

[7 C. W. N., 619]

See LIMITATION ACT, 1877, SCH II, ART. 134 . . . I. L. R., 25 Mad., 99**See LIT PENDENS. I. L. R., 23 All., 60**

[" 27 Bom., 266]

See RIGHT OF SUIT—

FRAUD; . I. L. R., 29 Calc., 395
 SALE IN EXECUTION OF DECREE.

— mortgaged property—**See MORTGAGE—SALE OF MORTGAGED PROPERTY.****See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—GENERAL CASES.**

[I. L. R., 29 Calc., 1]

— setting aside sale—**See CIVIL PROCEDURE CODE, s 244—QUESTIONS IN EXECUTION OF DECREE;**

[6 C. W. N., 279, 283]

PARTIES TO SUIT.

[6 C. W. N., 127]

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

[6 C. W. N., 663]

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—GENERAL CASES.

[I. L. R., 29 Calc., 1]

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[6 C. W. N., 836]

SALE IN EXECUTION OF DECREE—*continued.***1. IMMOVABLE PROPERTY.**

1.—*Civil Procedure Code (Act XIV of 1882), ss. 235, 237, 281, 287—Execution of decree, application for sale of tenure in—Incumbrance, notification of existence of—Incumbrance—Arrears of rent due in respect of the tenure—Rules made by the High Court—Omission to state existence of arrears of rent, effect of—Costs*

we brought to sale, the rules made by the High Court under the provisions of s 287 of the Code cast on him the duty of notifying the existence of arrears of rent due to him in respect of the property which he seeks to bring to sale. An arrear of rent due in respect of the property sought to be sold is to be regarded as one of the matters to be notified, as being material to the execution of the decree.

Nursing Narain Singh v. Raghoobur Singh (1894), I. L. R., 10 Calc., 609, and Eastur v. . .

property hypothecated for the rents "liable for the"

2. ERRORS IN DESCRIPTION OF PROPERTY SOLD.

2.—*Certificate of sale—Certificate of sale not conclusive as to the property sold at execution sale—Civil Procedure Code (Act XIV of 1882), ss. 316, 317.—A decree on a mortgage directed that the whole interest of five brothers in the mortgaged house should be sold. The proclamation of sale stated also that the whole interest in the house was to be sold. The sale took place, and the plaintiff was the purchaser. By a mistake, however, on the part of*

SALE IN EXECUTION OF DECREE— —continued.

3. JOINT PROPERTY—concluded.

All., 823; Derry v Peek (1889), L. R., 14 A. C.

[I. L. R., 23 All., 355]

6.—Hindu law—Vidakshara—Joint Hindu family Mortgage of joint family property executed by the father—Decree and sale of mortgaged property—Suit by sons to recover their shares—Act IV of 1852 (Transfer of Property Act), s. 85—Effect of sale—Where property belonging to a joint Hindu family has been sold by auction, in execution of a decree obtained upon a

decree against their father was obtained, provided that the mortgagee had at the time of suit notice of their interests in the property. But their suit must

ground that they were not made parties to the original suit. *Kannilla v Chandar Sen (1900), I. L. R., 22 All., 377*, overruled *Hargu Lal v. 19 All., 1895*, I. L. *Mahton v. Calc., 18*

HAM (F.B., 1902) I. L. R., 20 All., 214

4 MORTGAGED PROPERTY.

7.—Administration suit—Mortgage suit—Residuary legatee, mortgagee by—Administration, subsequent, of testator's estate—Receiver of testator's estate pending administration—Receiver, sale by, of mortgaged property before completion of administration—Defendant mortgaged certain properties, which he took under the will of his father, to the plaintiff. Plaintiff brought this suit on the mortgage, and obtained a decree and an order for sale by the Registrar. In the meantime a suit for administration of the testator's property had been filed, and an order had been made in that suit, appointing a

SALE IN EXECUTION OF DECREE— —continued.

4. MORTGAGED PROPERTY—continued

pending, and administration of the testator's estate had not been completed. Held that the sale could not be held by the Receiver before the completion of the administration Till such completion of

8.—Civil Procedure Code, ss. 310A and 311—Ss. 310A and 311 of the Code of Civil Procedure apply to sales of mortgaged property in execution of mortgage decrees *Kedar Nath Bant v. Kals Churn Ram, I. L. R., 25 Calc., 708*

approved *MALLIKARJUNADU SETTI v. LINGAMURTI PANTULU (F.B., 1903) I. L. R., 25 Mad., 244*

9.—Limitation—Mortgage—Payment—Prior mortgagee—Subsequent mortgagee—Limitation Act (XV of 1877), Sch. II, Art. 11—Civil Procedure Code (Act XIV of 1882), s. 835, rejection of objection under—If an objection under s. 835 of the Civil Procedure Code (Act XIV of 1882) is

10.—Sale for arrears of revenue—Mortgage—Execution of decrees—Sale of mortgaged property for arrears of revenue—Purchase of the same by the mortgagor—Realization of surplus sale-proceeds by mortgagees—Subsequent application to sell the same property under a decree on the mortgage. A mortgagor, by allowing the revenue payable in respect of the mortgaged property to fall into arrears, caused such property to be sold at auction by the Revenue-authorities, and it was purchased by the mortgagor benami in the name of a third person. The mortgagees, believing that this purchase was a genuine purchase, applied for and obtained payment out of Court of the surplus realized by the sale over and above the revenue due. Subsequently the mortgagees discovered the true nature of the purchase made by the mortgagor at the Revenue Court sale, and sought to have the same property, then in the hands of a transferee from the

SALE IN EXECUTION OF DECREE— continued

6. DISTRIBUTION OF SALE-PROCEEDS— continued.

(1890), *I. L. R.*, 15 *Bom.*, 438, approved. On 4th May, 1883, certain villages were mortgaged to *S* for Rs15,000. On 30th June, 1883, the same were mortgaged to *P* for Rs7,000. On 3rd November, 1883, a fresh bond executed in favour of *S* for Rs20,000, which, by its terms, kept alive the bond of 4th May, 1883. *S* sued on the bond of November, 1883, only, and not on the bond of May, 1883, and obtained a decree on the bond of November. *P* also brought a suit on his bond of June, 1883, and obtained a decree. Held that the mere suing on the bond of November did not amount to relinquishment by *S* of his rights under the bond of 4th May, 1883. There was no necessity for *S* to sue on the bond of May in order to obtain a sale for the whole of their debt.

SHANKAR SARUP v. LALA PRUL CHAND (1901)

[5 C. W. N., 649;
s.c., *I. L. R.*, 28 *ALL.*, 313;
I. R., 28 *I. A.*, 203

18.—Civil Procedure Code (*Act XIV of 1902*), s. 295—Rateable distribution under several decrees—Decrees must be against same judgment-debtor—Decrees against judgment-debtor—Subsequent decrees against his legal representatives and his estate.

one son then of the was then time the decree against Kashinath deceased. Civil Procedure Code rateably of the should be refused. Under s. 295 the money-decrees given in this the other the latter decree was expressed to be made against "Bhau Babaji, deceased, by his son Kashinath."

17.—Civil Procedure Code (*Act XIV of 1902*), ss. 185, 295—Execution of decree—Rateable division of proceeds of execution sale—Property attached in execution of decrees of several Courts—Attachment before judgment—Court of superior grade—Appeal—Revisional juris-

SALE IN EXECUTION OF DECREE— continued

6 DISTRIBUTION OF SALE-PROCEEDS— continued.

diction.—When property has been sold in execution of decrees in a Munsiff's Court, and, prior to the realisation of assets by sale, a decree-holder in the Subordinate Judge's Court, who

18.—Civil Procedure Code (*Act XIV of 1902*), s. 295—Rateable distribution of proceeds of execution sale—"Prior to the realisation"—"Same judgment-debtor."—The properties of a judgment-debtor were brought to sale, at the instance of

creditors above referred to was against a father,

19.—Chambers—Civil Procedure Code (*Act XIV of 1902*), ss. 295, 310A—Sale in

SALE IN EXECUTION OF DECREE— continued.

6. DISTRIBUTION OF SALE-PROCEEDS— continued.

695, followed. *ROSHUN LALL v. RAM LALL MULLICK* (1903) I. L. R., 30 Calc., 262; [a.c., 7 C. W. N., 341]

20.—*Rateable distribution—Civil Procedure Code (Act XIV of 1882), s. 295—Proportionate distribution of sale-proceeds—Decrees against the same judgment-debtor—Suit for refund of assets distributed—B obtained a decree against three judgment-debtors X, Y and Z. A obtained a decree against X and Y only. Held that A is entitled, under the provisions of s. 295 of the Code of Civil Procedure, to a proportionate distribution of the assets realised by the sale of property of X, Y and Z, in far as they represent the share of his own judgment-debtors X and Y in that property. Deboki Nundoo Sen v. Hart (1885), I. L. R., 12 Calc., 294, overruled. GONESH DAS BAORIA v. SHIVA LAKSHMAN BHAKAT (F B, 1903) I. L. R., 30 Calc., 583; B.C. (RAM DAYAL BAORIA v. SHIVA LAKSHMAN BHAKAT) 7 C. W. N., 414*

21.—*Civil Procedure Code, ss. 276, 295—Application for rateable share in proceeds of sale, not equivalent to an attachment—Held that an application, under s. 295 of the Code of Civil Procedure, for a rateable share in the proceeds of the sale of property attached by a creditor other than the applicant, is not equivalent to an attachment, and will be no bar to the judgment-debtor privately selling the property attached for the benefit of the attaching creditor. Ganga Din v. Khushali (1885), I. L. R., 7 All., 702, and Durga Churn Das Chowdhry v. Monmohini Dasi (1888), I. L. R., 15 Calc., 771, followed. Sorabys Edulji, Warden v. Gobind Ramji (1891), I. L. R., 18 Bom., 91, dissented from. MANOHAR DAS v. RAM AUTAR PANDE (1903) [I. L. R., 25 All., 431]*

22.—*Civil Procedure Code, ss. 233 and 295—Sale of decree, and transfer for execution to another Court—Application by transferee for rateable distribution of assets—Court to which such application should be made. A decree was transferred for execution from Mirzapur to Gorakhpur; the decree-holder also sold his interest in the decree. The transferee thereupon made an application for execution in the Gorakhpur Court, and prayed for a rateable share of the assets which might be realized*

SALE IN EXECUTION OF DECREE— continued.

6. DISTRIBUTION OF SALE PROCEEDS— concluded.

by the Court which passed the decree; (2) that the order passed by the Gorakhpur Court could not

of Civil Procedure *Madri Agarwal v. Jas Arsen Das* (1891), I. L. R., 16 All., 433, and *Amar Chandra Banerjee v. Guru Pranno Mukherjee* (1900), I. L. R., 27 Calc., 488, referred to. *TAKESHAN PRASAD v. THAKUR PRASAD* (1903) [I. L. R., 25 All., 443]

7. INVALID SALES.

FRAUD.

23.—*Code of Civil Procedure (Act XIV of 1882), ss. 214, 311, 312, 368—Allegation of fraud in application for setting aside sale.—No second appeal lies from an order setting aside a sale under s. 312 of the Code of Civil Procedure, although an allegation of fraud is made in the application for setting aside the sale, when no attempt is made to substantiate the allegation. Rafoni Kant Hageki v. Hossain Uddin Ahmed (1899), 4 C. W. N., 535, discussed and explained. Naro Kumar Roy v. Golam Chunder Dry, I. L. R., 18 Calc., 423; *Abhya Dassi v. Padmo Luckhun Mondol*, I. L. R., 17-7-11 v. red.*

4;
B.C., 13 v. 11, 124

24.—*Execution sale, application to set aside—*

obtained permission to bid for the said property, constitutes fraud which would vitiate the sale. *Mahomed Gaze Chondhry v. Ram Lall Sen* (1884), I. L. R., 10 Calc., 757, referred to. Art. 178, Sec. II, of the Limitation Act would govern such a case. *SRIMATI SARAT KUMARI DEBI v. NIMAI CHARY DEY SIRCAR* (1900) 11 C. W. N., 265

8. SETTING ASIDE SALE.

(a) GENERAL CASES.

25.—*Applicant—Civil Procedure Code (Act XIV of 1882), s. 310A—“Whose immovable property has been sold,” in s. 310A, meaning of—Sale in execution of rent-decree—Simple mortgage right of, to apply to set aside sale.—A simple*

(1) that the Court to which the decree was transferred for execution had no power to entertain the transferee's application for a rateable share in the assets; such application could only be entertained

SALE IN EXECUTION OF DECREE— continued.

II. SETTING ASIDE SALE—continued.

(a) GENERAL CASES—continued.

mortgagee is not a person entitled to have a sale set aside under s. 310A, Civil Procedure Code. *Hamidul Huq v. Matangini Dassi* (1938), 2 C. W. N., 542, referred to *KEDAB NATH SEN v. UMA CHABAN* (1900), 6 C. W. N., 57.

26.—Application by an attaching creditor of the property sold—*Locus standi*—“Any person whose immovable property has been sold,” meaning of.—An attaching creditor is not a “person whose immovable property is sold,” within the meaning of s. 310A, Civil Procedure Code, and he is not entitled to make an application to set aside the sale under that section. *Matangini Dassi v. Monmotha Nath Bora* (1900), 4 C. W. N., 542, referred to *KEDAB NATH SEN v. UMA CHABAN* (1900), 6 C. W. N., 57.

27.—Civil Procedure Code (Act XIV of 1882), ss. 278, 293, 310A.—A person who purchased property before it was attached in execution of a decree, and who unsuccessfully preferred a claim

not competent to apply under that section for setting aside the sale. *ABJAY MOLLAR v. JADUNATH BOY CHOWDARY* (1902), 7 C. W. N., 243.

mortgage decrees passed under the Transfer of Property Act (IV of 1882) ss. 304 to 310 of the Code of Civil Procedure apply to all sales of immovable property. *KRISHNAJI v. MAHADEV VINAYAK* (1900), 1 I. L. R., 25 Bom., 104.

29.—Application of Civil Procedure Code, ss. 310A, 311.—Ss. 310A and 311 of the Code of Civil Procedure apply to sales of mortgaged property.

approved. *MALLIKARJUNADU SETTI v. LINGAMURTI PANTULU* (1913), 1 I. L. R., 25 Mad., 244.

30.—Beneficial owner—Suit for possession—*Benamidar*—Beneficial owner—Party—Whether, in a proceeding for setting aside a sale, the beneficial owner is a necessary party—Execution proceedings—*Benamidar*—Civil Procedure Code (Act XIV of 1882), ss. 244, 311 and 437.—A beneficial owner is not a necessary party to a proceeding

SALE IN EXECUTION OF DECREE— continued.

8. SETTING ASIDE SALE—continued.

(a) GENERAL CASES—continued.

for setting aside an execution sale. It is competent to the Court to set aside the sale finally and conclusively as against the beneficial owner, although his *benamidar* only, and not he, is made a party to the proceeding. *BARODA KANTA ROSE v. CHUNDER KANTA GHOSH* (1902), 1 I. L. R., 29 Calc., 682; s.c., 6 C. W. N., 706.

framed by the Local Government thereunder governing such proceedings. *SHRO PRABAD v. MUHAMMAD MOHSIN KHAN* (1902), 1 I. L. R., 25 All., 167.

32.—“Decree-holder”—“Decree-holder”, meaning of—Civil Procedure Code (Act XIV of 1882), ss. 311 and 295—Execution—What class of decree-holder can come in under s. 295—*Locus standi*—Appeal—“The decree-holder”, in s. 311 of the Civil Procedure Code includes any decree-holder for the enforcement and satisfaction of whose decree the sale has been held, and would therefore include

attachment and sale of the property of B. If the property was attached and sold in execution of C's decree; but, prior to the sale, several other persons who held decrees against B having applied to the District Judge for execution of their decrees, the sale-proceeds were rateably distributed amongst them all. Thereupon A made an application to the District Judge to set aside the said sale under s. 311: Held that, inasmuch as A was not entitled to come in and share in the rateable distribution of assets under s. 295, he was not the “decree-holder” within the meaning of s. 311, and had therefore no *locus standi* to make an application under that section. *Matangini Dassi v. Monmotha Nath Bora* (1900), 4 C. W. N., 542, referred to. An appeal lies from an order passed under s. 312, refusing to set aside a sale on the ground that the applicant had no *locus standi* to apply under s. 311. *BEJOY SINGH DUTTA v. HUKUM CHAND* (1902), 1 I. L. R., 29 Calc., 548.

[I. L. R., 29 Calc., 548]

SALE IN EXECUTION OF DECREE— continued.

8. SETTING ASIDE SALE—continued.

(a) GENERAL CASES—continued.

33.—Deposit by Co-sharer—Deposit in Court—Civil Procedure Code (Act XIV of 1882), s. 310A.—A person claiming under the Mahomedan law a share in some immovable property which has been sold in execution of a decree against his co-sharers, cannot come in and make a deposit under s. 310A of the Civil Procedure Code. *Ramchandra v. ...*

21 Mad, 416, distinguished. ABDUL RAHAMAN v. MATTHEW RAHAMAN (1902)

[I. L. R., 30 Cal., 425]

34.—Fraud—Sale in execution of decree fraudulently obtained—Fraud—Innocent purchaser—Purchase for valuable consideration—Inadequacy of price—Suit to set aside sale—An ex parte decree was fraudulently obtained by the first defendant against the plaintiff, and in execution certain land of the plaintiffs, worth Rs. 2,000, was sold by auction, and was purchased by the second defendant for Rs. 400. The plaintiff sued to set aside the sale and to recover possession of the land. The facts found by the lower Courts were (1) that the decree was obtained by fraud, (2) and that the property was sold at a considerable undervalue. The purchaser had no knowledge of the fraud: *Held*, ...

35.—Gift—Civil Procedure Code (Act XIV of 1882), s. 310A—Application to set aside a sale—Gift of the land prior to attachment—Effect of sale—Applicability of the section.—Certain land was attached under a decree and sold. Application was thereupon made by a person, who claimed as donee of the land from the judgment- ...

may apply under s. 310A, though he be no party to the suit or to the decree under which the sale took place. *ERODE MANTIKOTH KRISHNAN NAIR v.*

SALE IN EXECUTION OF DECREE— continued.

8. SETTING ASIDE SALE—continued.

(a) GENERAL CASES—continued.

PUTHRIKETH CHEMBAKOSERI KRISHNAN NAIR (1902) . . . I. L. R., 28 Mad, 365

36.—“Immovable property”—Civil Procedure Code, s. 311—Mortgage-decree whether immovable property.—Having regard to the definition of “immovable property,” in the General Clauses Act, a decree upon a mortgage is incapable of being described or regarded as immovable property; and, when a mortgage of certain immovable property is sold in execution of a decree, an application under s. 311, Civil Procedure Code, to set aside the sale is incompetent. *Gous Mahomed v. Khawas Ali Khan (1898), I. L. R., 23 Cal., 450, relied upon. BAJI NATH LOHIA v. BIKOTENDRA NATH PALIT (1901)*

[8 C. W. N., 5]

37.—Limitation—Civil Procedure Code (Act XIV of 1882), ss. 310A, 351—Sale—Sale set aside on deposit of debt within 30 days—“Date of sale”—Limitation—Limitation Act (XV of 1877), s. 14, Sch. II, Art. 13—Appellate Court, order of—Second appeal—Exclusion of time during which a second appeal was pending—Certain property was sold in execution of a decree against the ...

ber the judgment-debtor applied under s. 310A of the Civil Procedure Code, to have the sale set aside on deposit of the requisite sum. *Held* that the application was barred by limitation, not having been made within 30 days from the date of sale; and that although, in computing the period of limitation, the time between the 25th May and the 2nd August might be excluded, the time between the 15th August and the 5th September, spent in prosecuting the second appeal, could not be excluded. *CROWDERY KESRI SARAT v. GIANI ROY (1903)*

[I. L. R., 29 Cal., 626; a.c., 6 C. W. N., 776]

38.—Private sale by judgment-debtor prior to Court sale—Civil Procedure Code (Act XIV of 1882), s. 310A and s. 244—Property privately sold by judgment-debtor prior to Court sale—Application by judgment-debtor to set aside a Court sale—Application rejected—Application to High Court under s. 622 Practices.—In execution of a decree passed against a judgment-debtor, his property was sold by auction. Prior, however, to the execution sale, he effected a private sale to another person, and out of the proceeds he paid off the judgment-creditor, who duly certified that the decree was satisfied. Subsequently the judgment-debtor applied under s. 310A to set aside the execution sale. His application was refused by the Judge, on the ground that, at the date of the execution sale,

SALE IN EXECUTION OF DECREE— continued

8. SETTING ASIDE SALE—continued.

(a) GENERAL CASES—continued.

he had no interest in the property, having disposed of it by private sale. He held, therefore, that he could not apply under s. 310A. Against this order the judgment-debtor applied to the High Court under s. 622 of the Civil Procedure Code (Act XIV of 1882). It was contended (1) that the order was one under s. 244 of the Civil Procedure Code; that an appeal lay from an order under that section, and that therefore he had no right of application under s. 622, and (2) that, he having disposed of his property by private sale, s. 310A did not apply. Held that s. 244 did not apply, inasmuch as the auction-purchaser certainly could not be taken to be the representative of the decree-holder, and, even assuming him to be a representative of the judgment-debtor, that section did not apply to a question between a party to the suit and his representative. s. 244, therefore, did not apply to the order complained of, which was consequently not appealable, for an

[I L R., 25 Bom., 631]

39.—Recovery of money—Indian Contract Act (IX of 1872), s. 69—Transfer of Property Act (IV of 1902), s. 108 (g)—Non-agricultural

suit does not lie by an under-tenant of non-agricultural land to recover from the tenant, his lessor, money which had been paid by him under s. 310A, Civil Procedure Code, to set aside a sale of his lessor's interest under a decree passed against the lessor. The money paid by the under-tenant after the sale was not money which the tenant was "bound by law to pay" under s. 310A, Civil Procedure Code, within the meaning of either s. 69 of the Contract Act or s. 108 (g) of the Transfer of Property Act. *Quare*—whether the under-tenant has any status to pay in the money under s. 310A, Civil Procedure Code. BEPIN BEHARI SARNOOKAR & KALIDAS CHATTERJEE (1901). 6 C. W. N., 336

40.—Suit in which applicant was not a

mortgagee had not been made a party—"Person whose immovable property has been sold"—Transfer of Property Act (IV of 1902), s. 17—

SALE IN EXECUTION OF DECREE— continued.

8. SETTING ASIDE SALE—continued.

(a) GENERAL CASES—concluded.

the sale set aside, and paid into Court the amount due to the first mortgagee. Held that the second

prior mortgage continued. He was, therefore, not a person whose immovable property had been sold, within the meaning of s. 310A of the Civil Procedure Code, and had no *locus standi* to apply under that section. MALLIKARJUNADU SETTI & LINGA MURTI PANTULU (1902). I L R., 28 Mad., 332

(b) IRREGULARITY.

41.—Confirmation of sale—Civil Procedure Code (Act XIV of 1882), ss. 810A, 811 and 812—Application to set aside sale—Application rejected—Confirmation of sale—Suit to set aside sale—A judgment-debtor having applied under s. 310A of the Civil Procedure Code (Act XIV of 1882) to set aside an execution sale, the application was rejected and the sale was confirmed under s. 812. Subsequently the judgment-debtor brought the present suit against the auction-purchaser, the judgment-creditor, and the assignee of the auction-purchaser, to set aside the sale. Held that, where an order is passed under s. 812 confirming the sale, it is an order passed against the judgment-debtor,

42.—Fraud—Civil Procedure Code (Act XIV of 1882), ss. 244 and 611—Fraud—Execution proceedings—Partition—Mortgage—After a sale

CHOWDERY & JUDHISTER CHUNDRA SHAHA (1902)
[I L R., 30 Calc., 142;
ac., 7 C. W. N., 303]

43.—Inadequacy of price—Civil Procedure Code (Act XIV of 1882), ss. 257, 311—Sale proclamation, contents of—Inadequacy of price.—

SALE IN EXECUTION OF DECREE— continued.

8. SETTING ASIDE SALE—continued.

(B) IRREGULARITY—continued.

The absence of specification in the sale proclamation of the incumbrances to which a property advertised for sale is subject, and which are required by cl. (c) of s. 297 of the Civil Procedure Code to be specified, coupled with the fact that the value of the property as stated in the sale proclamation was much below the proper price, amounts to a material misrepresentation, which must be treated as a material irregularity in publishing the sale, within the meaning of s. 311. *Sadainand Khan v. Phul Kwer (1898)*, 2 C. W. N., 550, relied upon. Where a property, subject to incumbrances, was worth at least ninety thousand rupees and was sold only for forty thousand: Held that the judgment-debtor sustained a substantial injury. The fact that the inadequacy of price was the result of irregularity in publishing the sale may either be established by direct evidence or be inferred from the circumstances of the case. *G. N. S. v. P. N. S. (1901)*, 2 C. W. N., 100.

44.—Leave to bid—Civil Procedure Code, ss. 244, 294—Procedure—Suit to set aside sale in execution, on the ground that the real purchasers were the decree-holders, who had not obtained leave to bid—Proper remedy by application.—The plaintiff sued to set aside a sale of certain property in execution of a decree against him, on the grounds that the sale was made by the judgment-debtor and his family members.

the above circumstances, the plaintiff's remedy was not by suit, but by application under s. 244 and the last clause of s. 294 of the Code of Civil Procedure. *Viravaghara Ayyangar v. Venkatasahayar, I L R. 6 Mad., 217*; *Viravaghara v. Venkata, I L R. 16 Mad., 257*; *Chintamani Natta v. Pithabati, I L R. 11 Bom., 688*; *Genu v. Sakharan, I L R. 22 Bom., 271*; *Subbarayudu v. Kotayya, I L R. 15 Mad., 383*; *Mahomed Gazze Chowdhry v. Ram Loil Sen, I L R. 10 Calc., 787*; *Mohendra Narain Chaturaj v. Gopal Mondal, I L R. 17 Calc., 769*; *Prasanna Kumar Sanyal v. Kail Das Sanyal, I L R. 19 Calc., 683*; and *Rubun Mohun Pal v. Nanda Lal Dey, I L R. 26 Calc., 524*, referred to. *DURGIA KUNWAR v. BALWANT SINGH (1901)*

[I L R., 23 All., 478]

45.—Postponement of sale—Civil Procedure Code (Act XIV of 1852), s. 311—Postponement of sale from proclaimed date, and subsequent sale without fresh proclamation—Waiver of fresh proclamation by judgment-debtor—Objection to sale, by other judgment-creditor, for want of proclamation—Sustainability.—A, the decree-holder in a suit, attached property of his judgment-debtor.

SALE IN EXECUTION OF DECREE— continued.

8. SETTING ASIDE SALE—continued.

(B) IRREGULARITY—continued

B, the holder of another decree against the same judgment-debtor, brought the property to sale in execution of his decree. The sale was first proclaimed for a certain date, but was twice postponed on the application of the judgment-debtor, who consented to waive the making of a fresh proclamation. A claimed to have the sale set aside on the ground of irregularity. Held that a waiver by a judgment-debtor of a fresh proclamation after a sale has been adjourned does not necessarily prevent a judgment-creditor from objecting to a sale so held, on that ground. *Semble* that the refusal by a Court to issue a fresh proclamation, if applied for by a judgment-creditor in such a case, would constitute a ground on which the regularity of the sale might be impeached. *CHAKRAPANI CHETTIAR v. DHANU SETTU (1900)*. I L R., 24 Mad., 311

46.—Civil Procedure Code (Act XIV of 1852), ss. 291, 311—Waiver—Estoppel—Adjournment on application of judgment-debtor—Fresh sale proclamation.—An application by a judgment-debtor for an adjournment of the sale "without issue of fresh proclamation and beat of drum" does not amount to a waiver preventing him from applying to set aside the sale held on the day adjourned on the ground that proclamation of sale was consequently that when he was ignorant had not been properly posted up on the various properties according to law. Such a waiver does not amount to a waiver of any fraud practised upon the judgment-debtor. *Giridhari Singh v. Hardeo Narain Singh (1874)*, L. R., 3 I. A. 230, and *T. E. Arunachellam Chetti v. P. R. B. M. A. R. Arunachellam Chetti (1893)*, L. R., 15 I. A., 171, referred to. *PREO LALL PAUL CHOWDERY v. RADHIKA PROSAD PAUL CHOWDERY (1901)*

[6 C. W. N., 42]

47.—Civil Procedure Code (Act XIV of 1852), ss. 291, 311—Waiver—Adjournment

specification in s. 311, Code of Civil Procedure. *Surnomoyee Debi v. Dakshina Ranjan Sanyal (1896)*, I L R., 23 Calc., 291; *Jamini Mohan v. Chandra Kumar Roy (1901)*, 6 C. W. N., 41; *Venkata Subbarayudu Chetti v. Zamindar of Kattinagar (1896)*, I L R., 20 Mad., 159, referred to. The fact that the judgment-debtor consents that the sale should be held without the issue of a fresh proclamation does not indicate that he waives the non-specification of the hour of the day to which the sale is adjourned, inasmuch as he has no control over the form of the order of the Court. To show that substantial injury was the result of the irregularity complained of, the judgment-debtor is only to

SALE IN EXECUTION OF DECREE— continued

8. SETTING ASIDE SALE—continued.

(b) IRREGULARITY—continued.

show that there is reason for inferring that it was due to and resulted from material irregularity. *Surnomoyee Debi v. Dakhina Ranjan Sangal* (1896), *I. L. R.*, 24 Cal., 291; *Macnaghten v. Mahabir Pershad Singh* (1889), *I. L. R.*, 16 I. A., 107; and *Arunachellam Chetti v. Arunachellam Chetti* (1888), *I. L. R.*, 15 I. A., 171, referred to. *BHUKARI MISRA v. RANI SURJA MONI PAT MAHA DAI* (1901) 8 C. W. N., 48

JAMINI MOHAN NUNDY v. CHANDRA KUMAR ROY (1901) 8 C. W. N., 44

48.—Publishing and conducting sale—Ground for setting aside sale—Civil Procedure Code (Act XIV of 1882), ss. 810A, 811—It is not open to an applicant under s. 810A of the Civil Procedure Code—

50.—Receipt—Execution of decree—Joint decree—Sale in execution—Purchase by decree-holders—Receipt for part of decretal money, given by one decree-holder on behalf of both—Sale set

SALE IN EXECUTION OF DECREE— continued.

8. SETTING ASIDE SALE—concluded.

(b) IRREGULARITY—concluded.

purchasers had put in the receipt under the second clause of s. 294, and directed a re-sale, and this notwithstanding that the other decree-holder admitted that the receipt had been presented on his behalf also. On appeal to the District Judge, the order of the

(c) SUBSTANTIAL INJURY.

51.—Value of property—Civil Procedure

9. SETTING ASIDE SALE—RIGHTS OF PURCHASERS.

RECOVERY OF PURCHASE-MONEY.

52.—Civil Procedure Code (Act XIV of 1882), ss. 11, 315—Refund of purchase-money when judgment-debtor has no saleable interest in the property sold—Suit for such refund, whether maintainable—Remedy—S. 315 of the Code of Civil Procedure is not exhaustive, and does not confine an execution purchaser to the special remedy provided by that

10 C. W. N., 240

53.—Decree—Conditions of sale—Title, abstract of, not corresponding with original—Setting aside sale, application for—Purchase-money, return of.—A purchaser of property at the Registrar's sale in

SALE IN EXECUTION OF DECREE—
*concluded.***9 SETTING ASIDE SALE—RIGHTS OF**
PURCHASERS—concluded.**RECOVERY OF PURCHASE-MONEY—concluded.**

requisitions. On the 19th August, 1899, by an order of the Court the purchaser was to pay the balance of the purchase-money into Court (he having already

abstract, and, upon having certain Persian writing, which he discovered amongst them, read by an expert, found that the abstract of title did not correspond

debarred from applying to the Court to set aside the sale on the ground that the abstract was incorrect and contained a material misdescription; and that he was, under the circumstances, entitled to have his purchase-money refunded. *In re Banister* (1879), *L. R. 12 Ch. D., 181, 150*, *M'Culloch v. Gregory* (1855), *1 Kay and J., 286*; *Else v. Else* (1871), *L. R. 18 Eq., 196*; *Upendra Nath Mitter v. Obhoy Kali Dassee* (1901), *5 C. W. N., 593*, referred to. *AGHOOR NATH MOOKERJEE v. ADMINISTRATOR-GENERAL OF BENGAL* (1903)

[*I. L. R.*, 30 Cal., 468]

SALE OF GOODS.

See CONTRACT—BREACH OF CONTRACT.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—BREACH OF CONTRACT, 7 C. W. N., 912

two partners for the price of goods purchased—

SALE OF GOODS—concluded.

GAVARAPU SARRAPU v. RAMPRATAPU (1901)

[*I. L. R.*, 25 Mad., 580]

SALE-PROCEEDS.

See SALE FOR ARREARS OF RENT—SURPLUS
PROCEEDS OF SALE.

—application of—

See MORTGAGE—SALE OF MORTGAGED
PROPERTY—RIGHTS OF MORTGAGEES.

[*I. L. R.*, 30 Cal., 853]

—distribution of—

See MORTGAGE—SALE OF MORTGAGED
PROPERTY—RIGHTS OF MORTGAGEES.

[*I. L. R.*, 29 Cal., 803]

See SALE IN EXECUTION OF DECREE—DIS-
TRIBUTION OF SALE-PROCEEDS.

—suit to recover surplus—

See LIMITATION ACT, 1877, SEC. 11—
ART. 29; I. L. R., 30 Cal., 440
ART. 132 . 5 C. W. N., 356

SALT.**—position of peon of Salt Department—**

See PUBLIC SERVANT.

[*I. L. R.*, 28 Cal., 344]

SAMAJ.

See BRAHMO SAMAJ.

SAMPLES.

See DAMAGES—SUITS FOR DAMAGES—
BREACH OF CONTRACT.

[*I. L. R.*, 29 Cal., 323]

See WARRANTY, BREACH OF.

[*I. L. R.*, 29 Cal., 587]

SANCTION.**—of Collector—**

See MADRAS ANKARI ACT, s. 24.

[*I. L. R.*, 38 Mad., 430]

—of Court—

See CIVIL PROCEDURE CODE, s. 257A.

[*I. L. R.*, 27 Bom., 98]

See COMPROMISE—COMPROMISE OF SUITS
UNDER CIVIL PROCEDURE CODE.

[*I. L. R.*, 28 Bom., 109]

—to build—

See BENGAL MUNICIPAL ACT (III OF 1884).
ss. 233 AND 273 . 5 C. W. N., 49

The partner who had not signed the notes contended that the suit did not lie as framed, and that it should

SANCTION—concluded.

— to build—concluded.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT (II OF 1888), ss. 247, 250, 427.

[I. L. R., 30 Calc., 317]

— to build, given under misapprehension, induced by applicant—

See CALCUTTA MUNICIPAL ACT (BEN. ACT III OF 1899), ss. 449, 580 AND 631.

[7 C. W. N., 858]

— to sue—

See LEAVE TO SUE.

SANCTION FOR PROSECUTION.

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|---|------|
| 1 WHERE SANCTION IS NECESSARY, OR OTHERWISE | 1033 |
| 2 WHEN SANCTION MAY BE GRANTED | 1034 |
| 3 NOTICE OF SANCTION | 1035 |
| 4 NATURE, FORM AND SUFFICIENCY OF SANCTION | " |
| 5 POWER TO GRANT SANCTION | 1036 |
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See ADMINISTRATOR-GENERAL

[I. L. R., 30 Calc., 927]

See CRIMINAL PROCEDURE CODE, s. 476

[7 C. W. N., 428, 795]

See FALSE CHARGE . . . C. W. N., 106

See JOINDER OF CHARGES.

[I. L. R., 25 Bom., 90]

See PENAL CODE, s. 206

[I. L. R., 28 Calc., 217]

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.

[I. L. R., 25 All., 126]

" 26 Mad., 139

1. WHERE SANCTION IS NECESSARY, OR OTHERWISE.**1.—Disobedience to order promulgated**

required, under s. 400 of the CODE OF CRIMINAL PROCEDURE, the previous sanction of the public servant who had promulgated the order. Sanction had, in fact, been granted by the Chairman of the Municipality in which the order was disobeyed; but the

SANCTION FOR PROSECUTION—*continued.***1. WHERE SANCTION IS NECESSARY, OR OTHERWISE—concluded.**

Magistrate held that such Chairman was not the public servant who had promulgated the order, and that it was not shown that he had been specially empowered to grant the sanction. Held that the order of acquittal was wrong. Inasmuch as the order in question had been promulgated by the Government, and not by any public servant, no sanction was required. *QUEEN-EMPRESS v SOUTH* (1900)

[I. L. R., 24 Mad., 70]

being lodged against him under the section, it was contended that he was a public servant, within the meaning of s. 197 of the Code of Criminal Procedure, and that the Court could not take cognizance of the offence inasmuch as the sanction referred to in s.

3.—*Tahsildar—Criminal Procedure Code (Act V of 1898), s. 193—Alleged forgery of documents submitted to Tahsildar holding inquiry as to transfer of names in Land Register—Revenue Court—Necessity for sanction to prosecute offender.*—*A Tahsildar*, when holding an inquiry as to whether a transfer of names in a land register should be made or not, is a Revenue Court; and, before a party to any proceeding in such a Court can be prosecuted for an offence referred to in s. 195 (c) of the Code of Criminal Procedure, sanction should be obtained. *QUEEN-EMPRESS v MURDA SHETTI* (1900)

[I. L. R., 24 Mad., 121]

2. WHEN SANCTION MAY BE GRANTED.

4.—*Code of Criminal Procedure (Act V of 1898), ss. 195, 203—Sanction to prosecute for bringing a false complaint—Penal Code (Act XLV of 1860), s. 211—Police-report declaring complaint false—Application for inquiry into the complaint—Complaint—Judicial determination.*—An application for an inquiry into their complaint, made by persons in showing cause why they should not be prosecuted for bringing a complaint declared by the

SANCTION FOR PROSECUTION— continued.

2. WHEN SANCTION MAY BE GRANTED— concluded.

police to be false, is in effect in the nature of a complaint, and sanction for prosecution for bringing a false complaint cannot be given unless and until that complaint is judicially determined. "Judicial determination" of a complaint does not necessarily mean the trial of the persons against whom the complaint is made, but means the final determination of the matter of the complaint by the officer holding the

3. NOTICE OF SANCTION.

5.—*Criminal Procedure Code, s. 195—Notice to accused—Necessity.*—There is no hard-and-fast rule that notice must be given in all cases to an accused person before sanction is accorded for his prosecution. *IN THE MATTER OF GOVINDU (1902)* [I. L. R., 26 Mad., 562]

4. NATURE, FORM AND SUFFICIENCY OF SANCTION.

6.—*Sufficiency of Sanction.*—Letter—Public servant—Substantive offence—Abetment—Fresh sanction—*Criminal Procedure Code (Act V of 1898), ss. 195, 197, 230—Penal Code (Act XLV of 1860), ss. 469, 470* [I. L. R., 26 Mad., 562]

forgery for the purpose of cheating. At the trial it was contended on behalf of the accused that there could be no conviction for abetment when sanction had been given for prosecution for the substantive offence only. Held that the letter of the Inspector-General of Registration was a sufficient sanction to justify the conviction, and that no fresh sanction was necessary under s. 230 of the Criminal Procedure Code. *PROFULA CHANDRA SEN v. EMPEROR (1903)* [I. L. R., 30 Cal., 805; a.c., 7 C. W. N., 494]

7.—*Naming of offender—Criminal Procedure Code (Act V of 1898), s. 195 (4).*—Cl. (4) of s. 195 of the Code of Criminal Procedure applies only to cases in which, at the time of granting sanction to prosecute, the offender is uncertain or unknown. Where there is no doubt as to whom the prosecution is to be directed against, the offender should be named. *SEQUEIRA v. LUSA RAI (1901)* [I. L. R., 25 Mad., 671]

8.—*Order in alternative—Criminal Procedure Code, ss. 195, 476—Order directing prosecution—Order framed in the alternatives held to be bad—Revision.*—A District Magistrate, having before him an application for the grant of sanction to prosecute a certain person for perjuries alleged

SANCTION FOR PROSECUTION— continued.

4. NATURE, FORM AND SUFFICIENCY OF SANCTION—concluded.

this order, being framed in the alternative, was a null order, and could not be acted upon. *HASAN SHAH v. HARDEO SHAH (1903)* [I. L. R., 25 All., 234]

5. POWER TO GRANT SANCTION.

10.—*What Court—Code of Criminal Procedure (V of 1898), s. 195 (b).*—The Court which tries the case on its merits, and not the Court before which proceedings were instituted and process is issued, is the proper Court to grant sanction for prosecution under s. 195, Criminal Procedure Code. *Putiram Buidas v. Mahomed Karem (1895)*, 8 C. W. N., 33, followed. *JEEVAN KRISTA SHAW v. BEKOR KRISTA SHAW (1901)* [6 C. W. N., 35]

11.—*Criminal Procedure Code (Act V of 1898), ss. 195 (7), 407 (2).*—Court

empowered to hear appeals under the provisions of

6 DISCRETION IN GRANTING SANCTION.

12.—*Forgery—Criminal Procedure Code (Act V of 1898), s. 195, sub-s. (3).*—Evidence—Tendering an evidence document alleged to be forged, but not judicially considered; sanction to prosecute for—An application under s. 195 of the Criminal Procedure Code, for sanction to prosecute for tendering in evidence a document alleged to be forged, should

SANCTION FOR PROSECUTION—
*continued.***6. DISCRETION IN GRANTING SANCTION—**
concluded.

not be refused on the ground that the document was only tendered in evidence and not judicially considered. But, where there are no *prima facie* good grounds for instituting criminal proceedings, such sanction should not be granted. **GURU CHARAN SHAHA v. GIRIJA SUNDARI DASAI** (1902)

[I. L. R., 29 Calc., 887;
s.c., 7 C. W. N., 113]

Assistant Magistrate declined to interfere, on the ground that, as the Sub-Magistrate had had judicial evidence before him, and had also held the necessary inquiry before granting sanction, the necessary conditions had been fulfilled, and it was not for him,

7. REVOCATION OF SANCTION**14.—Chief Judge of Small Causes Court—**

Court composed of one or more Judges. In the **MATTER OF GOVERDHAN DAS MEHJI** (1902)

[I. L. R., 27 Bom., 130]

15.—Commissioner of Bhagalpur—Jurisdiction—Sanction to prosecute—Criminal Procedure

Court of the Deputy Commissioner of the Sonthal Parganas is to be deemed to be subordinate to the Court of the Commissioner of Bhagalpur. Accordingly, an application against an order of the Deputy Commissioner of the Sonthal Parganas, revoking a sanction given by the Subordinate Judge of Godda under s. 195 of the Code of Criminal Procedure, should be made to the Commissioner of Bhagalpur,

SANCTION FOR PROSECUTION—
*continued.***7. REVOCATION OF SANCTION—continued.**

and not to the High Court. **MUNNA LAL CHOWDHRY v. PADMAN ABISSE** (1903)

[I. L. R., 30 Calc., 916]

16.—Joint Magistrate—Appeal—Revocation

sanction to prosecute granted under s. 195 of the Code by an Assistant Magistrate exercising second class powers. *Held* that the existence of the special power which was conferred on him by the District Magistrate did not constitute the Joint Magistrate the Court to which appeals ordinarily lay under s. 195, cl. (7), from a Magistrate exercising second class powers, and that his order revoking the sanction must be set aside, as having been made without jurisdiction. **SADHU LALL v. RAM CHURN PAST** (1902)

[I. L. R., 30 Calc., 884;
s.c., 7 C. W. N., 114]

17.—Indefinite sanction—Sanction to prosecute for bringing a false charge—Criminal Procedure Code (Act V of 1898), s. 195—Sanction, general and indefinite—On information given by the petitioner against certain persons, accusing them of some offences under the Penal Code, the Police investigated the matter and declared the charge to be false. On a judicial inquiry, the

Indian Penal Code, was of an indefinite character,

the Court giving the sanction or upholding it will

SANCTION FOR PROSECUTION—continued.**7. REVOCATION OF SANCTION—concluded.**

not be properly exercising the discretion vested in it by law. *IN RE PABER KUNHAMMED* (1902)

[I. L. R., 26 Mad., 118]

8. EXPIRY OF SANCTION.

19.—Computation of period—Criminal Procedure Code (Act V of 1898), s. 195—Sanction to prosecute—Computation of the period of six months—Starting point—Date of original sanction and not of appellate order.—The period of six months, during which sanction to prosecute remains in force under s. 195 (6) of the Code of Criminal Procedure, is to be computed from the date of the original order granting sanction, and not from that of a final order of an Appellate Court declining to revoke it. *IN RE MUTHUKUDAM PILLAI* (1902)

[I. L. R., 26 Mad., 190]

20.—Extension of period—Criminal Procedure Code (Act V of 1898), s. 195 (b)—Appeal against order according sanction—Disposal of appeal after expiration of six months from order according sanction—Application for extension of time—Good cause.—Sanction was accorded for a prosecution, and an appeal was preferred against the order, which was not disposed of until after the expiration of six months from the date of the order. Upon an application being made for an extension of time for the prosecution of the accused: *Held* that good cause had been shown for the extension. *KARUPPANA SERTAGARAN v. SINGA GOVINDEN* (1902)

[I. L. R., 26 Mad., 480]

9. POWER TO QUESTION GRANT OF SANCTION.

21.—Court trying the case—Criminal Procedure Code (Act V of 1898), s. 195—Prosecution sanctioned by competent authority—Trial by another Magistrate in pursuance of sanction—Competency of Court to question propriety of sanction.—Where sanction has been accorded under s. 195 of the Criminal Procedure Code by a competent Court, and a prosecution is instituted in

been committed in any proceeding in the Court by which the sanction was granted. *PACHAI ANNAI* (1902)

[I. L. R., 26 Mad., 189]

22.—Superior Magistrate—Criminal Procedure Code (Act V of 1898), s. 195—Grant of sanction to prosecute—Failure to decide that a *prima facie* case has been made out—Legality of sanction.—Application was made to a second class Magistrate for sanction to prosecute a person on a charge of abetment of giving false evidence in a judicial proceeding. The Magistrate held an inquiry and examined three witnesses, and then refused to accord sanction. Application was then made to the Sub-Divisional Magistrate, who granted sanction. In

SANCTION FOR PROSECUTION—concluded.**9. POWER TO QUESTION GRANT OF SANCTION—concluded.**

doing so, he did not hold that a *prima facie* case had been made out, or that there was a probability of securing a conviction. He expressed the view that it was essential that the truth of the matter should be threshed out, and, for that reason, sanctioned the prosecution, as that appeared to be the only course by which it could be decided whether or no the very serious offence charged had been committed. *Held* that this was no ground for granting sanction, or for setting aside the order of the second class Magistrate refusing sanction. *VENKATESA AYYANGAR* (1902)

[I. L. R., 26 Mad., 193]

SAPINDAS.**See HINDU LAW—**

ADOPTION—REQUISITES FOR ADOPTION—AUTHORITY;

[I. L. R., 26 Mad., 627, 681]

INHERITANCE—GENERAL HEIRS—SAPINDAS.

SCHEDULED DISTRICTS ACT, (XIV OF 1874).

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL

[I. L. R., 25 Bom., 667]

—ss. 3, 5 and 6—

See LEGAL PRACTITIONERS ACT, ss. 5 AND 6 . . . I. L. R., 24 All., 348

SEA.

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION—OFFENCE COMMITTED ON THE HIGH SEAS.

SEAL.

See REGISTRATION ACT, s. 80.
[8 C. W. N., 528]

SEAL WARRANT.

ART.
ON—
REF.
580

SEARCH BY POLICE.

See CRIMINAL PROCEDURE CODE, s. 103.

See MALICIOUS SEARCH.

[I. L. R., 27 Bom., 590]

SEARCH-WARRANT.

See STAMP ACT (II OF 1903), s. 33
[I. L. R., 25 Mad., 525]

SEARCH-WARRANT—concluded.

—disposal of property—

See CRIMINAL PROCEEDINGS.

[I. L. R., 28 Bom., 552]

SECOND APPEAL.

See SPECIAL OR SECOND APPEAL.

SECRETARY OF STATE.See SALE FOR ARREARS OF REVENUE—
SETTING ASIDE SALE—PARTIES.

[7 C. W. N., 377]

—Liability of, for wrongful attachment—

See MESNE PROFITS—ASSESSMENT IN
EXECUTION, AND SUITS FOR MESNE
PROFITS. I. L. R., 28 Calc., 540

—suit against—

See CIVIL PROCEDURE CODE, s. 424

[I. L. R., 24 Mad., 279
25 All., 187]1.—Suit against—Jurisdiction—Defamation in
Government Resolution—Secretary of State, liability
of, to be sued—Governor and Members of
Council, Liability of—Act of State—Government

honesty and trustworthiness. The Resolution then
set forth the penalties inflicted in respect of the said
misconduct. The defendant (*inter alia*) contended
that the suit was not maintainable. Held that the
Court had no jurisdiction, and that the suit was not
maintainable, on the following grounds: (1) The

SECRETARY OF STATE—concluded.

suit would lie against the East India Company in
respect of acts of State or acts of Sovereignty, and
therefore no suit in respect of such acts lies against
the Secretary of State in Council. (3) The plaintiff
was a public officer, whose employment was one

powers (e.g., of reduction or censure). It is open
to the Government, by Resolution or otherwise, to

malice is allowed, and no proof of malice takes away
the privilege. No action, therefore, could be based
on any libel, however malicious, contained in the
Resolution. It was contended for the defendant

SECRETARY OF STATE FOR INDIA IN COUNCIL (1902)
[I. L. R., 27 Bom., 189]

2.—Illegal detention of property
The defendant contended that the

SECURITY.

See PROTECTION OF PROPERTY.

[7 C. W. N., 522]

—to appear—

See FALSE EVIDENCE—GENERAL CASES.

[5 C. W. N., 630]

See RECOGNIZANCE TO APPEAR.

—to keep the peace—

See RECOGNIZANCE TO KEEP PEACE.

SECURITY FOR COSTS.

See DIVORCE ACT (IV of 1869).

[I. L. R., 30 Calc., 631

See DIVORCE ACT, s. 36 [C. W. N., 414

See LETTERS PATENT, HIGH COURTS, 1865

CL. 15. I. L. R., 25 Mad., 684
28 Mad., 502

See PRACTICE—CIVIL CASES—SECURITY
FOR COSTS.

See RES JUDICATA—CAUSES OF ACTION.

[I. L. R., 26 Bom., 637

—SUIT—PRACTICE—CIVIL PROCEDURE CODE (XIV
of 1852), s. 350—Two plaintiffs, father and
daughter—SUIT for damages for breach of promise
to marry.—A Parsi father and daughter (plaintiffs 1
and 2) sued for Rs. 10,000 as damages for the defend-
ant's breach of his promise to marry the daughter
(plaintiff 2). The defendant alleged that the suit
was really a suit for the benefit of the father, who
sought to make money out of his daughter's betrothal;
that he (the father) was an undischarged insolvent
and not in a position to pay costs if he lost the suit;
and that the second plaintiff (the daughter) had no
property in India. The defendant took out a sum-
mons under s. 380 of the Civil Procedure Code,
requiring the plaintiffs to give security for costs.
The Court ordered that security for costs should be
given. *ROMANJI JAMSETJI MISTRY v. NUSSEHWANJI
RUSTOMJI MISTRY* (1902)

[I. L. R., 27 Bom., 100

SECURITY FOR GOOD BEHAVIOUR.

See REFERENCE TO HIGH COURT—CRIM-
INAL CASES—SECURITY FOR GOOD
BEHAVIOUR.

See SENTENCE—IMPRISONMENT—IMPRIS-
ONMENT GENERALLY

[I. L. R., 23 R., All., 423

1.—Bad livelihood—Code of Criminal Proce-
dure (Act I of 1898), s. 109—"Ostensible means
of subsistence," proof of—"Doing no work," if
sufficient—"Precious conviction," how far relevant
—Procedure.—The fact that a man does no work, or
that he was once before convicted for bad livelihood,
does not justify a Magistrate, without being satisfied
from evidence that since his release the accused has
no ostensible means of livelihood, in ordering him
to furnish security for good behaviour. *QUEEN-
EMRESS v. POORAN AGARWALLA* (1900)

[5 C. W. N., 28

**SECURITY FOR GOOD BEHAVIOUR—
continued.**

an "officer in charge of a police-station", within the
meaning of cl. (p) and (q) of s. 4, Code of Criminal
Procedure, had no authority to arrest him. *Held*
that, whether the arrest was illegal or not, the Bench
ought not to have discharged the accused, but that

how he came before them being immaterial. *Emperor
v. Ravalu Kesigadu* (1902), I. L. R., 26 Mad., 123,
approved. *Held, also*, that, s. 55 having been
expressly made applicable to the police in Calcutta,
the arrest of the accused by the Inspector was legal.
The Criminal Procedure Code does not apply to the
Police in Calcutta unless expressly made applicable
to them [s. 1, sub-s. (2)]. Cls. (p) and (q) of s. 4,
Code of Criminal Procedure, do not apply to the
Police in Calcutta. *SOLICITOR TO THE GOVERN-
MENT OF INDIA v. MADHO DHONI* (1903)

[7 C. W. N., 861

3.—Character of proceedings—Discharge of

4.—Delegation of inquiry—Criminal Proce-
dure Code, ss. 110, 118—Inquiry into sufficiency
of security delegated to *Tahsildar*—Practice.—
Held that it is not competent to a Magistrate who
has passed an order under s. 118 of the Code of
Criminal Procedure, to delegate to another officer the
inquiry into the sufficiency of the security tendered,
but such inquiry must be made by the Court by
which the original order was passed. *Queen-Emress
v. Pirthi Pal Singh*, *Weekly Notes*, 1899, p. 154,
followed. *EMPEROR v. TORI* (1903)

[I. L. R., 25 All., 272

5.—Evidence of repute—Criminal Procedure
Code (Act I of 1898), ss. 110, cl. (f), 117—
Repute, admissibility of evidence of—Evidence of
repute is not admissible in cases coming under
cl. (f) of s. 110 of the Code of Criminal Procedure.

annoying the inmates in various ways, by sitting
at their doors at night or throwing brick-bats on the
roof and annoying respectable women: *Held* that
these imputations, even if proved, do not constitute
conduct so as to render the petitioners liable to give
security for good behaviour by reason of their being
so desperate and dangerous as to render their being
at large without security hazardous to the community.
*AKHOY KUMAR CHATTERJEE v. QUEEN-
EMRESS* (1900) 5 C. W. N., 240

6.—Grounds for refusing to accept
surety—Criminal Procedure Code (Act I of
1898), ss. 110, 122—Tender of surety—Consid-

SECURITY FOR GOOD BEHAVIOUR— continued.

eration of a question by High Court outside rule—Case in which the High Court pointed out to the Magistrate below what are not valid grounds for refusing a surety under s. 122, Criminal Procedure Code, although no rule was issued on the subject. Where a Magistrate refused to accept sureties tendered by a person bound to be of good behaviour, on such grounds as that they were unfit to control the defendant, that they were not residents of the village, and in one case that two persons were members of the same firm: Held that these were not valid grounds for refusing to accept a surety under s. 122, Criminal Procedure Code. The question is not whether a surety can supervise a person for whom he stands surety, but whether he is a person of sufficient substance to warrant his being accepted. *Abinash Malakar v The Empress (1900)*, 4 C. W. N. 797, approved. *RAM PERSHAD v KING-EMPEROR (1902)*. 6 C. W. N., 593

7. ——— Criminal Procedure Code, s. 122—Sureties offered refused on the ground of their relationship to the person required to find security—Where, on an order to find security for good behaviour, the Magistrate refused to accept the sureties tendered, on the sole ground that they were relations of the person against whom the order had been passed, it was held that relationship to the person called upon to find security was, so far from being an objection, a most useful qualification in the persons tendered as sureties. *EMPEROR v SHIB SIKH (1902)*. 1 L. R., 25 All., 131

8. —Habitual offenders—Thief—Habitual thieves and dacoits—Desperate and dangerous characters—Evidence—Specific acts—General repute—Criminal Procedure Code (Act V of 1893), ss. 110 and 117—A charge under cl. (f), s. 110, of the Criminal Procedure Code cannot be proved by general reputation, but must be proved by definite evidence. To prove a charge under s. 110, that a person is by habit a thief and a dacoit, or that he is so desperate and dangerous as to render his being at large without security hazardous to the community, there should be proof of specific acts showing that he, to the knowledge of some particular individual, is a dangerous or desperate character. It is not sufficient that persons, however respectable, should come forward and depose that they have heard that such person is a thief and a dangerous character, when they themselves have no personal knowledge of or acquaintance with him. Such evidence is not only such as could not safely be acted upon, but is also likely to work serious prejudice. *KALAI HALDAR v EMPEROR (1901)*. [1 L. R., 29 Cal., 779]

9. ——— Proceedings instituted by Magistrate on his own knowledge or suspicion—Transfer, right of accented to a—Criminal Procedure Code (Act V of 1893), ss. 110, 117 and 191—Where a Magistrate has framed a proceeding under s. 110 of the Criminal Procedure Code against a party, and has proceeded in some measure, if not mainly, on his own knowledge of the character of

SECURITY FOR GOOD BEHAVIOUR— continued.

that party, such Magistrate is not a proper person to proceed with the trial under s. 117 of the Code and

10.—Jurisdiction of Magistrate—Criminal Procedure Code (Act V of 1893), s. 110—Magistrate, jurisdiction of, to require security for good behaviour—Residence outside his jurisdiction—

KITABDI v QUEEN-EMPRESS (1900)
[5 C. W. N., 29]

11. ——— Surety bond—Acceptance by Subordinate Magistrate of bond—Cancellation of such bond by District Magistrate—Jurisdiction—Criminal Procedure Code (Act V of 1893), ss. 110 and 125—Where the security bond of the petitioner, who had been bound over to be of good behaviour, and the surety bonds of his sureties, had

12.—“Offences involving a breach of the peace”, meaning of—Immoral and indecent acts—Criminal Procedure Code (Act V of 1893), ss. 106 and 110, cl. (e)—The words “offences involving a breach of the peace,” in s. 110, cl. (e), of the Criminal Procedure Code, mean offences in

give security for good behaviour under s. 110, cl. (e), of the Code: Held that the order for security should be set aside, as the offences were not such as involved a breach of the peace, within the meaning of that clause. *ART'S SAMANTA v EMPEROR (1902)*. [1 L. R., 30 Cal., 386]

13.—Reference to Sessions Judge—Criminal Procedure Code, ss. 123 and 340—Reference to the Sessions Judge—Notice to be given of proceedings before the Judge to the persons required to find security—Where, under s. 123 of

SECURITY FOR GOOD BEHAVIOUR—
concluded.

the Code of Criminal Procedure, reference is made to the Sessions Judge, in the case of a person called upon by a Magistrate to find security for a term exceeding one year, it is expedient, and highly desirable for the ends of justice, that a date should be fixed for the hearing of such reference, and that notice of such date should be given to the person concerned. *Jhoja Singh v Queen-Empress (1896)*, *I. L. R.*, 23 Cal., 493, and *Nakhi Lal Jha v. Queen-Empress (1900)*, *I. L. R.*, 27 Cal., 656, followed. *Queen-Empress v. Ajudhia*, Weekly Notes, 1898, p. 60, and *Queen-Empress v. Mutasaddi Lal (1893)*, *I. L. R.*, 21 All., 107, referred to. *EMPEROR v. GIRAND (1903)* *I. L. R.*, 25 All., 375

14.—Residence of sureties—Criminal Procedure Code, ss. 110 et seq.—Power of Court to assign geographical limits within which the sureties required must reside—Held that a Court, in ordering security for good behaviour to be given with sureties, is competent to assign some geographical limits within which the sureties required must reside. *Queen-Empress v. Rahim Baksh (1898)*, *I. L. R.*, 20 All., 206, referred to. *EMPEROR v. NABBU KUAN (1902)* *I. L. R.*, 24 All., 471

15.—Revival of proceedings—Criminal Procedure Code, ss. 110, et seq., and 437.—Power of District Magistrate to re-open proceedings on the same record, after the discharge of the person called upon to show cause by a Magistrate of the first class—Held that it is competent to the Magistrate of the District, in the case of a person who has been called upon, under s. 110 of the Code of Criminal Procedure, by a Magistrate of the first class, to show cause why he should not furnish security for good behaviour, and has been discharged by such Magistrate under s. 119 of the Code, to institute fresh proceedings against such person upon the basis of the record that was before the first class Magistrate. *Queen-Empress v. Mutasaddi Lal (1893)*, *I. L. R.*, 21 All., 107; *Queen-Empress v. Raiti*, Weekly Notes, 1899, p. 203; *Queen-Empress v. Ahmad Khan*, Weekly Notes, 1900, p. 206, and *Queen-Empress v. Iman Mondal (1900)*, *I. L. R.*, 27 Cal., 662, referred to. *KING-EMPEROR v. FAYAD-DIN (1901)* *I. L. R.*, 24 All., 148

16.—Term—Criminal Procedure Code (Act V of 1898), ss. 112, 118, 144, 145—Notice to give security for three months—Order to give security for twelve months—Validity—Discretion to proceed under s. 107 or ss. 144 and 145.—Where a notice is issued under s. 112 of the Code of Criminal Procedure to a defendant, to show cause why he should not give security to be of good behaviour for three months, the Magistrate has no power to order security to be given for a longer period. Where a defendant is found by the Magistrate to be in

659, distinguished. *BELAGAL RAMACHANDR v. EMPEROR (1902)* *I. L. R.*, 28 Mad., 471

SENTENCE.

See **APPEAL IN CRIMINAL CASE—CRIMINAL PROCEDURE CODE.**

[*I. L. R.*, 23 All., 497

See **FINE.**

See **IMPRISONMENT.**

See **WHIPPING.**

[*I. L. R.*, 25 Bom., 712

—powers of High Court as to sentences—

See **REFORMATORY SCHOOLS ACT—**

ss. 8, 9, 16, 5 C. W. N., 210

ss. 8, 11 *I. L. R.*, 28 Cal., 423

IMPRISONMENT.

1.—Imprisonment in default of fine—Under s. 388 (2) of the Code of Criminal Procedure,

2.—Imprisonment in default of giving security for good behaviour—Criminal Procedure Code, ss. 110, 123—Security for good behaviour—Term for which imprisonment in default of finding security should be ordered—Although it is within the competence of a Sessions Judge, acting under s. 123 (3) of the Code of Criminal Procedure,

(1901)

SEPARATE ACQUISITION.

See **HINDU LAW—JOINT FAMILY—**

PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY;

NATURE OF, AND INTEREST IN, PROPERTY.

SEPARATE CHARGES.

See **JOINDER OF CHARGES.**

SEPARATE OFFENCES

—conviction of—

See **APPEAL IN CRIMINAL CASE—PRACTICE AND PROCEDURE.**

[*I. L. R.*, 30 Cal., 288

—trial of—

See **JOINDER OF CHARGES.**

SEPARATE PROPERTY.*See* SEPARATE ACQUISITION.**SERVANT.***See* MASTER AND SERVANT.*See* PUBLIC SERVANT.**—liability of—***See* BENGAL EXCISE ACT (VII of 1878)—

§ 53; . I. L. R., 29 Calc., 498
 § 59 606

SERVICE OF PROCESS.*See* SUMMONS, SERVICE OF.**SERVICE TENURE.****—ghatwall tenure—***See* ATTACHMENT—SUBJECTS OF ATTACHMENT—EXPECTANCY

[I. L. R., 28 Calc., 483]

SERVICE TENURE—concluded.**SESSIONS JUDGE.***See* CHARGE TO JURY.*See* FALSE EVIDENCE—GENERAL CASES
[5 C. W. N., 615, 630 (twice)]*See* REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.
[I. L. R., 26 Mad., 139]**—duty of—***See* JUDGMENT—CRIMINAL CASES
[7 C. W. N., 30]*See* PRACTICE—CRIMINAL CASES—RULE TO SHOW CAUSE*See* REFERENCE TO HIGH COURT—CRIMINAL CASES . . . 7 C. W. N., 845*See* REVISION—CRIMINAL CASES—DISCHARGE OF ACCUSED . 7 C. W. N., 77*See* VERDICT OF JURY—GENERAL CASES
[7 C. W. N., 135]**—powers of—***See* CHARGE—ALTERATION OR AMENDMENT OF CHARGE . 8 C. W. N., 72**SESSIONS JUDGE, JURISDICTION OF***See* CHARGE—FORM OF CHARGE.
[I. L. R., 28 Calc., 434]*See* DISCHARGE OF ACCUSED,
[I. L. R., 24 Mad., 136]*See* MAGISTRATE—RETRIAL OF CASES
[I. L. R., 29 Calc., 412]*See* POSSESSION, ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE;
[I. L. R., 28 Calc., 416]

DECISION OF MAGISTRATE AS TO POSSESSION . 8 C. W. N., 71

See REVISION—CRIMINAL CASES—ACQUITTALES . . . 7 C. W. N., 711

1.—Evidence recorded partly by another

throughout a period of 120 years, and the land descended hereditarily from father to son, there having been no instance of re-emption during that period. Moreover, the present holder of the zamindari had taken leases from the *mokhassadars* as if they were

SESSIONS JUDGE, JURISDICTION OF

—continued.

prudence not recorded by himself and he cannot do

[I. L. R., 26 Bom., 50

2.—Order for re-trial on appeal—Criminal Procedure Code (Act V of 1898), ss 423 (b), 232—

1918 AND NO JURISDICTION. Apart from the general power given to an Appellate Court to order re-trial, under s. 423 (b), Code of Criminal Procedure, a Sessions Judge is empowered to order re-trial

defence by the absence of a charge or a defect in the

imposed by the Magistrate against them, however, referred only to the knowledge and belief and acts and omission of the accused themselves. The Sessions

charges so amended as to have reference to the acts and omissions of the agents. Held that the order for re-trial was legally made by the Sessions Judge. SARAT CHANDRA SHAH CHOWDERY v. EMPEROR (1902) 7 C. W. N., 301

3.—Powers on revision—Continction of

Appellate Co- power to or PANDIT C

4.—Qualification—Criminal Procedure Code (Act V of 1894), ss 476, 497, 556—False statement made before District Judge—Order for inquiry—Conviction—Appeal to the Sessions Judge—Sessions Judge who is interested in the case, and disqualified from hearing appeal—A Sessions Judge is not, by reason merely of having as a District Judge ordered an inquiry under s. 476, Code of Criminal Procedure, disqualified under s. 497 of that

SESSIONS JUDGE, JURISDICTION OF

—concluded.

Code from trying the case, or hearing an appeal when the case has been tried by a lower Court; nor does this make him "personally interested" in the case within the meaning of s. 497, C. P. Code.

[7 C. W. N., 708

SET-OFF.

Col.
1. GENERALLY 1052
2. CROSS-DECREES "

See MESNE PROFITS—ASSESSMENT IN EXECUTION, AND SUITS FOR MESNE PROFITS. I. L. R., 26 All., 286

1. GENERALLY.

1.—Decretal amount—Decretal amount as set-off—Civil Procedure Code (Act XIV of 1932),

Held that the lower Court was wrong in not enter-

2. CROSS-DECREES.

2.—Civil Procedure Code, s. 246—Execution of decrees—Decree against which set off is claimed not before the Court for execution—S. 246 of the Code of Civil Procedure clearly contemplates that, where one decree is sought to be set off against

3.—Civil Procedure Code (Act XIV of 1932), ss 233, 246—Cross-decrees on same day against same parties in different suits—Subsequent transfer of one decree to third party—Petition for execution by transferee decree-holder—Right of transferee subject to equity of cross-decree-holder—On 3rd February, 1900, cross-decrees were passed between A and B in different suits. A's decree against B was for Rs. 1000. B's decree against A was for Rs. 500. On 25th February, 1900, A's decree against B was transferred to C. The transfer from B to C could take effect against A in respect of his cross-decree

SICKS.

—application of Probate Act to—

See PROBATE AND ADMINISTRATION ACT
(V OF 1881) . . . 7 C. W. N., 895**SLANDER.**See LIMITATION ACT, 1877, SCH. II, ARTS.
21 AND 25 . . . I. L. R., 24 All., 388

—Defamation—Action for slander—Special damage—Damages for mental distress alone, not recoverable—Cause of action—Presidency Town—English Law of Slander, rules of—Charter of 1726—Limitation Act (XV of 1877), Sch. II, Art. 25.—In an action for damages against the defendant, for

Parath v. Mannar (1881), I. L. R., 8 Mad., 176, discussed. *Kashiram Krishna v. Dhadu Bapji*, (1870) 7 Bom. H. C., A. C., 17; *Jogeshwar Sharma v. Dinaram Sharma* (1899), 3 C. W. N. 123 (Notes); and *Dawan Singh v. Mahip Singh* (1898), I. L. R., 10 All., 425, 456, distinguished. Damages are not recoverable for mental distress alone, caused to the plaintiff by slanderous words conveying insult. *Wilkenson v. Downton* (1897), 2 Q. B., 57; *Lynch v. Knight* (1861), 9 H. L. C., 677, 599, referred to. By the Common Law of England, introduced into Calcutta by the Charter of 1726, a person injured by slanderous words can recover damages in an action, when actual damage has been caused. *The Advocate General of Bengal v. Rames Surnomoyee Dossee* (1863), 9 Moo. I. A., 887, 426; *Ratcliffe v. Evans* (1892), 2 Q. B., 452; (s.c., 5 C. W. N., 959)

Law of
le to this
BISWAS

(s.c., 5 C. W. N., 959)

SMALL CAUSE COURT.See PRACTICE—CIVIL CASES—STAY OF
PROCEEDINGS . I. L. R., 30 Calc., 627**SMALL CAUSE COURT, MOFUSSIL.****1. JURISDICTION—**

| | |
|------------------------------|------|
| ATTACHMENT | Col. |
| DAMAGES | 1056 |
| IMMOVABLE PROPERTY | " |
| MAINTENANCE | 1057 |
| MISSE PROFITS | " |

SMALL CAUSE COURT, MOFUSSIL—continued.

| | |
|-------------------------------------|------|
| 1. JURISDICTION—concluded. | Col. |
| RENT | 1059 |
| TITLE, QUESTION OF | " |
| TRUSTS | 1059 |
| WRONGFUL DISTRAINT | 1060 |
| 2. PRACTICE AND PROCEDURE | " |

See SPECIAL OR SECOND APPEAL—SMALL
CAUSE COURT SUITS.

—jurisdiction of—

See ATTACHMENT—SUBJECTS OF ATTACH-
MENT—SALARY.

[I. L. R., 30 Calc., 713]

See MUSSIF . I. L. R., 26 Mad., 219

See NORTH-WEST PROVINCES RENT ACT
(XII OF 1881), ss. 42, 65 AND 206.

[I. L. R., 24 All., 517]

See REFERENCE TO HIGH COURT—CIVIL
CASES . . . I. L. R., 25 All., 135See RES JUDICATA—COMPETENT COURT
—SMALL CAUSE COURT CASES.See SALE IN EXECUTION OF DECREE—
ERRORS IN DESCRIPTION OF PROPERTY
SOLD . . . I. L. R., 28 Calc., 235**1. JURISDICTION.**

diction to award damages, under s. 491 of the Civil Procedure Code, to a defendant whose property has been attached on insufficient grounds. *IBRAHIM ROWTHEN v. SANGARAM SURETT* (1902)

[I. L. R., 28 Mad., 804]

2.—Damages—Provincial Small Cause Courts
Act (IX of 1897), Sch. II—Suit for damages for

ised his tenants to enjoy all his rights, and the tenants covenanted not to cut trees growing on the estate. The landlord's rights included the right to cut certain green trees for his own use and certain other green trees for agricultural purposes, as well as all trees planted by himself, at his option; and he was further entitled to take and use all decayed and fallen

SMALL CAUSE COURT, MOFUSSIL— continued.

DIGEST OF CASES.

(1058)

SMALL CAUSE COURT, MOFUSSIL— continued.

1. JURISDICTION—continued.

the suit fell within the exception of cl (31) of Sch. II to the Provincial Small Cause Courts Act (IX of 1897), and was not of a nature cognizable by Courts of Small Causes, and that, therefore, an appeal lay to the District Court from the Court of the Subordinate Judge. **ANTONY v. MAHADEV AYANT (1900)**

[I. L. R., 25 Bom., 85]

6. — Civil Procedure Code (Act XIV of 1882), s 558—Sust of a nature cognizable in a Court of Small Causes—Sust for Cause Courts Act (IX of 1897), Sch. II, cl. (31).—A suit for mesne profits is not a suit for an account, but a suit for damages, and is not exempted from the jurisdiction of the Small Cause Courts under cl (31) of Sch. II to the Provincial Small Cause Courts Act. There is no second appeal from a decision in such a suit. **SUNNA RAO v. SITARAMAYYA (1900)**

[I. L. R., 24 Mad., 118]

7. — Provincial Small Cause Courts Act (IX of 1897), Sch. II, cl. (31).—Disposition of plaintiff from immovable property by defendant under decree—Receipt by defendant of profits—Decree reversed on appeal—Sust by plaintiff to recover profits wrongfully obtained by Small Cause Court—Defendant certain immovable property, in execution of which defendant took possession of the property. Plaintiff appealed against the decree, which was reversed. While defendant was in possession, he received profits from the property amounting to a sum less than Rs 500. Plaintiff now sued in the Court of Small Causes to recover this sum as profits which had been wrongfully received by defendant. **Held** that the suit was not cognizable by a Court of Small Causes. **Sudda Rao v. Sitaramayya, I L. R., 24 Mad., 118; Seshagiri Ayyar v. Marakathammal, I L. R., 23 Mad 196, and Kanyo Behary Singh v. Madhub Chandra Ghose, I L. R., 23 Cal., 884, considered. SAYARIMETTU v. ATTURU ROWTHAR (F.B., 1901)**

[I. L. R., 25 Mad., 103]

8. — Rent—Provincial Small Cause Courts Act (IX of 1897), s 15, Sch. II, cl. (3)—Improvements—Jurisdiction of Small Cause Court—Plaintiff sued to recover arrears of rent due by defendants, and also prayed that the value of improvements due to the defendants might be made liable for the claim. **Held** that the suit was one for rent, and triable by a Court of Small Causes. **KARNANAKA KURUP v. MUNIYERAYAN (1901)**

[I. L. R., 24 Mad., 336]

9. — Title, Question of—Provincial Small Cause Courts Act (IX of 1897), s 23—Claim to possession of land when title to land disputed—Second appeal—Civil Procedure Code (Act XIV of 1882), s 536—Practice—The plaintiff sued to recover R75 as the *utpas* (income) of certain lands.

instance, and no objection was raised, either there or on appeal, as to the competency of that Court to entertain it. The District Munsif passed a decree in plaintiff's favour for a portion of the amount claimed, which was increased by Rs. 1-8-0 by the Subordinate Judge, on appeal. Upon a civil revision of the suit was one for damages for breach of covenant, and as such was cognizable by a Court of Small Causes, and that the Court in which it had been instituted had no jurisdiction to entertain it. **RAMASAMY CHETTIAR v. ORR (1903)**

[I. L. R., 26 Mad., 176]

3. — Immovable property—Act IX of 1897 (Provincial Small Cause Courts Act), Sch. II, cl. (31) and (31)—Small Cause Court—The plaintiff claimed, as land-owner, to be entitled to receive the rents or fees paid by shopkeepers for the temporary occupation, during a fair, of a piece of land, which, the plaintiff alleged, belonged to the defendant. He further alleged that the defendant, claiming that the land was his, had wrongfully received those dues or rents. **Held** that this was a suit which fell within the provisions of the latter part of cl (31) of the second Schedule to Act IX of 1897, and was not within the cognizance of a Court of Small Causes. **Damodar Gopal Dikshit v. Chintaman Balkrishna Karve (1898), I L. R., 17 Bom., 42, referred to. RAMSARAN SINGH v. DURGA DAS (1901)**

[I. L. R., 23 All., 437]

4. — Maintenance—Act IX of 1897 (Indian Contract Act), s 23—Consideration opposed to public policy—Parents making profit for themselves out of the marriage of their daughter—Small Cause Court suit—Act IX of 1897 (Provincial Small Cause Courts Act), Sch. II, cl. (39).—The parents of a girl caused her to enter into an utterly unseverable marriage, the husband agreeing to pay a certain sum monthly for the maintenance of the parents. On suit by the mother to recover certain instalments of the maintenance so promised, it was **held** (1) that the suit was one not cognizable by a Court of Small Causes; and (2) that the agreement was one which was opposed to public policy, and ought not to be enforced. **Shyamsundar v. Ganapairao (1891), I L. R., 16 Bom., 267; Dhuldas Jikrao v. Fulechand Chhagan (1897), I L. R., 22 Bom., 638; and Purnanathan v. Sominathan (1899), I L. R., 13 Mad., 63, referred to. BALDEO SARAI v. JYOTNA KUNWAR (1901)**

[I. L. R., 23 All., 495]

5. — Mesne profits—Nature of suit—Appeal—Provincial Small Cause Courts Act (IX of 1897), Sch. II, cl. (31).—The plaintiff purchased certain land in June, 1892, at a sale in execution of a decree against R. He did not obtain formal possession until June, 1904. The defendant was in actual possession of the land, under an alleged private sale by R. to him in October, 1892. The plaintiff now sued the defendant for mesne profits for three years, viz., from 1894 to 1896, alleging that they had been wrongfully received by the defendant. **Held** that

SMALL CAUSE COURT, MOFUSSIL— continued.

1. JURISDICTION—continued.

In his defence the defendant raised the question of the title to the land. The plaintiff obtained a decree, which was confirmed in appeal. *Held* that the suit, although raising the question of title, was a suit cognizable by a Small Cause Court, and that, therefore under s. 586 of the Civil Procedure Code (Act XIV of 1882), no second appeal lay. **VINAYAK GANGADHAR BHAT v. KRISHNARAO SAKHARAM ADHIKARI (1901)** . . I. L. R., 25 Bom., 625

10. — *Provincial Small Cause Courts Act (IX of 1887), s. 23—Question of title—Return of plaintiff—Jurisdiction of Civil Court—Declaration of title—Civil Procedure Code (Act XIV of 1882), s. 586—Appeal.*—Where a plaint, having been returned by the Small Cause Court under s. 10 of the Provincial Small Cause Courts Act, was presented to the Munsif's Court, together with a petition asking the Court to come to a decision on the question of title, but there was no prayer for declaration of title to the land, nor did the plaintiff offer to pay any further court-fees: *Held* that the question of title could not be decided finally in such a suit, and that the lower Appellate Court had no jurisdiction to make a declaratory decree for title. *Also*, that a second

11.—*Trusts—Act IX of 1887 (Provincial Small Cause Courts Act), Sch. II, cl. (18)—Small Cause Court suit—Suit relating to a trust—Suit to recover money paid to legal practitioner to institute suits, but not so expended—*

COMMERCIAL BANKING CORPORATION v. MUHAMMAD ISMAIL KHAN (1901) . . I. L. R., 24 All., 208

12. — *Provincial Small Cause Courts Act (IX of 1887), Sch. II, cl. (18)—Suit for money borrowed by a trustee from his co-trustees out of moneys belonging to the trust estate—“Suit relating to a trust”—Jurisdiction of Small Cause Court.*—One of several trustees of a charity personally borrowed from other trustees some moneys belonging to the estate of the charity, and gave a promissory note therefor. The other trustees subsequently instituted a suit in the Small Cause Court to recover the amount; *Held* that the suit was not one “relating to a trust,” within the meaning of cl. (15) of Sch. II to the Provincial Small Cause Courts Act, and that the Small

SMALL CAUSE COURT, MOFUSSIL— continued.

1. JURISDICTION—concluded.

Cause Court had jurisdiction to try it. **SUNDARAKINGAM CHETTI v. MARIYAPPA CHETTI (1902)**

[I. L. R., 28 Mad., 200]

13. — *Provincial Small Cause Courts Act (IX of 1887), Sch. II, cl. (18)—Suit relating to a trust—Appointment of plaintiff under trust deed on a salary—Suit for unpaid salary—Jurisdiction of Small Cause Court.*—By a deed of trust, the settlor vested a press in trustees, with the object of conducting a newspaper, and appointed plaintiff as editor and manager, on a fixed salary. Plaintiff acted, but subsequently resigned. On a suit being brought by plaintiff, on the Small Cause side of the Subordinate Judge's Court, to recover the amount due to him by way of salary between the date of the trust deed and that of his

14.—*Wrongful distraint—Provincial Small Cause Courts Act (IX of 1887), s. 10, Sch. II, cl. 35 (3)—Compensation for illegal distraint—Civil Procedure Code (Act XIV of 1882), s. 556—Second appeal—Limitation—Rent Recovery Act (Madras Act VIII of 1865), s. 78—Cause of action complete on date of illegal distraint.*—A plaintiff alleged that plaintiff had for long cultivated certain land as tenants under defendant, that they had raised a crop of paddy, measuring about 6 garces, and stored it in three heaps on the land, that one of the plaintiffs had paid all the kist that was due to defendant, but that defendant had taken unlawful possession of two of the heaps of

RAM DASAR V. SUBBIAH
24 Mad., 339, distinguished. **PAMU SANTANI v. ZAMISDAR OF JAYAPUR (1901)**

[I. L. R., 25 Mad., 540]

2. PRACTICE AND PROCEDURE.

15.—*Jurisdiction—Small Cause Suit—Subordinate Judge invested with Small Cause jurisdiction*

SMALL CAUSE COURT, MOFUSSIL—
*concluded.***2. PRACTICE AND PROCEDURE—concluded.**

—Small Cause suit tried by a Subordinate Judge under his ordinary jurisdiction—Appeal.
Where a Subordinate Judge invested with Small Cause jurisdiction tries a Small Cause suit under

SMALL CAUSE COURT, PRESIDENCY TOWNS—

Col.

1. JURISDICTION—

(a) BREACH OF PROMISE OF MARRIAGE . . . 1062

(b) IMMOVABLE PROPERTY . . . "

2. PRACTICE AND PROCEDURE—

(a) NEW TRIAL . . . 1063

(b) REFERENCE TO HIGH COURT. . . "

(c) RE-HEARING . . . 1064

See SANCTION FOR PROSECUTION—

POWER TO GRANT SANCTION ;

[I. L. R., 27 Bom., 180

REVOCATION OF SANCTION.

[I. L. R., 27 Bom., 180

—Act XV of 1882, s. 20—

See DAMAGES—MEASURE AND ASSESSMENT

OF DAMAGES—BREACH OF CONTRACT.

[I. L. R., 28 Bom., 235

—Calcutta—

See CALCUTTA MUNICIPAL CONSOLIDATION ACT (BEN ACT II OF 1888), s. 135

[8 C. W. N., 480

—jurisdiction of—

See ARBITRATION—AWARDS—VALIDITY OF AWARDS, AND GROUND FOR SETTING THEM ASIDE I. L. R., 30 Calc., 397

See ATTACHMENT—SUBJECTS OF ATTACHMENT—TRUST PROPERTY

[I. L. R., 28 Calc., 574

—jurisdiction over—

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL

[I. L. R., 29 Calc., 498

See SUPERINTENDENCE OF HIGH COURT—

CIVIL PROCEDURE CODE, s. 622

[7 C. W. N., 843

I. L. R., 30 Calc., 588

—practice and procedure; new trial—

See WITHDRAWAL OF SUIT.

[I. L. R., 29 Calc., 339

SMALL CAUSE COURT, PRESIDENCY TOWNS—continued.**1. JURISDICTION.****(a) BREACH OF PROMISE OF MARRIAGE.**

1.—Madras City Civil Court Act (VII of 1892), s. 3—Sui for "breach of promise of marriage"—Contract of marriage, between intended bridegroom and parent of intended bride—Cognizable by Small Cause Court—Presidency Small Cause Courts Act (XV of 1882), s. 19 (q).—The phrase "breach of promise of marriage," which occurs in cl. (q) of s. 19 of

the marriage, and not between an intended bridegroom and the parent of the intended bride. By s. 3 of the Madras City Civil Court Act, 1892, jurisdiction is conferred upon the City Civil Court to try all suits of a civil nature except, inter alia, suits cognizable by the Small Cause Court. By s. 19, cl. (q), of the Presidency Small Cause Courts Act, the Small Cause Court has no jurisdiction to entertain suits for compensation for breach of promise of marriage. A suit was filed in the City Civil Court for compensation for breach of promise of marriage; but the contract alleged to have been broken had been entered into between the parent of the intended bride and the intended bridegroom. Held that the Court had no jurisdiction, inasmuch as such a suit was not exempted from the jurisdiction of the Small Cause Court. MUHAMMAD ASHERUFF MUHAMMAD SAHIB v. MUHAMMAD ALI (1901)

[I. L. R., 24 Mad., 652

(b) IMMOVABLE PROPERTY

2.—Small Cause Courts Act (XV of 1882), s. 41—Mortgage—Mortgage sale—Ejectment—Suit, brought by purchaser at mortgage sale, to eject

mortgagee through whom he (the plaintiff) claimed. Held that the case did not come within s. 41, and that the Small Cause Court had no jurisdiction to try the suit. A purchaser at a mortgage sale does not claim through the mortgagee, for the purpose of s. 41 of the Small Cause Courts Act (XV of 1882). That section deals with the right to recover possession, rather than with title, and consequently the derivative claimant must establish that his right to possession is the same as that which was vested in

SMALL CAUSE COURT, PRESIDENCY TOWNS—concluded.

2. PRACTICE AND PROCEDURE—concluded.

(c) REMARKING—concluded.
second, or the Chief and any other Judge, hear and dispose of the application. Such being the unwritten rules of practice, they must be deemed to be "Rules treated as in force in the Court on 31st December, 1894" under cl. (2) of s 9 of the Act, and to be validly in force. They fall within the principle that an inveterate practice amounts to a rule of law. *Held, further*, that the power to alter, set aside or reverse the decree under s 38 of the Act includes the power of the Full Court to pass a decree in favour of the party in whose favour the application is granted. The practice of the Court of Small Causes at Bombay, of reviewing the decree in cases in which the notes of evidence are sufficient to enable the Full Court to undertake that review, and of setting aside a wrongful dismissal of the suit where the decision is manifestly against the weight of evidence, is not contrary to law. *BERHAM KAIK-BUSHEU IRANI v. ARDESHIR KAVAJI* (1903) [I. L. R., 27 Bom., 563]

SOLICITOR.

See ATTORNEY.

See ATTORNEY AND CLIENT

SOMAJ.

See BRAHMO SAMAJ.

SONTHAL PARGANAS REGULATION (V OF 1893). JUSTICE

—s. 15—

See SANCTION FOR PROSECUTION—REVO-
CATION OF SANCTION
[I. L. R., 30 Calc., 916]

SONTHAL PARGANAS SETTLEMENT REGULATION (III OF 1872).

See PARTITION—RIGHT TO PARTITION—
PARTITION OF PORTION OF PROPERTY.
[5 C. W. N., 185]

SPECIAL OR SECOND APPEAL.

1. ORDERS SUBJECT OR NOT TO APPEAL. Col.
2. SMALL CAUSE COURT SUITS—

- (a) MISSE PROFITS 1069
- (b) RENT 1070
- (c) TITLE, QUESTION OF "
- 3 GROUNDS OF APPEAL—
- (a) QUESTIONS OF FACT "
- (b) EVIDENCE, MODE OF DEALING WITH 1071

See RES JUDICATA—

ADJUDICATIONS;
[I. L. R., 28 Calc., 471]
COMPETENT COURT—REVENUE
COURTS 5 C. W. N., 788

1. ORDERS SUBJECT OR NOT TO APPEAL.

1.—Arrears of rent—*Suit—Act X of 1859, ss 23, 77, 153, 160, 161—Act VIII of 1855, ss 254, 272—Chota Nagpur Landlord and Tenant Proce- dure Act (Bengal Act I of 1879), ss. 37, 141—A second appeal lies to the High Court from an appellate decree of the District Judge in a suit for*

SPECIAL OR SECOND APPEAL—continued.

4 OTHER ERRORS OF LAW OR PROCEDURE—

- (a) DISCRETION, EXERCISE OF 1071
- (b) VALUATION OF SUIT 1072
- (c) PROCEDURE "

5 PROCEDURE IN SPECIAL APPEAL "

See COURT FEES ACT, s 28.
[I. L. R., 25 Mad., 380]
—application of rule that notice to agent binds principal—
See DECLARATORY DECREE, SUIT FOR—
SUITS CONCERNING DOCUMENTS
[I. L. R., 29 I. A., 203]

—errors of law or procedure; remand—
See REMAND—CASES OF APPEAL AFTER
REMAND I. L. R., 28 Calc., 324

—non-exclusion from limitation period
of time spent in prosecuting—
See SALE IN EXECUTION OF DECREE—
SETTING ASIDE SALE—GENERAL CASES.
[I. L. R., 29 Calc., 626]

—orders subject or not to appeal—
See SUPERINTENDENCE OF HIGH COURT—
CIVIL PROCEDURE CODE, s 622
[5 C. W. N., 192]
See RAILWAY COMPANY

—plea urged for the first time in—
[I. L. R., 27 Bom., 597]
—Small Cause Court suits; title, ques-
tion of—
See SMALL CAUSE COURT, MORTGAGE—
JURISDICTION—TITLE, QUESTION OF.

—under Bengal Tenancy Act—
See BENGAL TENANCY ACT, s 13
[5 C. W. N., 180]
7 C. W. N., 691

SPECIAL OR SECOND APPEAL—*continued.***1. ORDERS SUBJECT OR NOT TO APPEAL—***continued.*

[*I. L. R.*, 28 Calc., 532;
a.c., 5 C. W. N., 279

2.—Compensation for illegal notices—*Provincial Small Cause Courts Act (IX of 1857)*, s. 15, Sch. II, cl. 85 (j)—*Civil Procedure Code (Act XIV of 1852)*, s. 556—*Second appeal—Limitation—Rent Recovery Act (Madras Act VIII of 1855)*, s. 78—*Cause of action complete on date of illegal distress.*—A plaintiff alleged that plaintiffs had for long cultivated certain land as raised a crop stored it in the plaintiffs defendant, but that defendant had taken unlawful possession of two of the heaps of paddy, measuring about 5 garces, under the pretext that he had distrained them. The prayer was for an order directing defendant to deliver to plaintiffs about 5 garces of grain, worth Rs 250 at Rs 50 per garce, in respect of the two heaps of paddy of which he had taken unlawful possession. The distraint was made on 23th January, 1896, and the suit was instituted on 23th July of the same year.—*Held* that the suit was in substance one for compensation for illegal distress or attachment, and not for the recovery of specific property, and that, in consequence, it was not a suit of the nature cognizable by a Court of Small Causes, and a second appeal lay. *Held, also*, that

3.—Decision of Sub-Judge, where no appeal lies to him—*Appeal—Second appeal from decision of Sub-Judge when no appeal lies to him, if maintainable.*—*Decree on an award—Civil Procedure Code (Act XIV of 1852)*, ss. 540, 562, 622.—When no appeal lies to the Subordinate Judge, a second appeal to the High Court does not lie from his decision. When, therefore, a decree was passed by the Munsif upon an award, and an appeal was preferred to the Subordinate Judge, who set aside the decree of the Munsif on the ground that the award was bad, and sent the case back for the trial of the case on the merits: *Held* that, the award being good and valid, no appeal lay to the Subordinate Judge, and no appeal lay to the High Court against his order, and the remedy lay under a 622, *Civil Procedure Code*. *GANOA CHARAN ROY v. SASTI MANDAL* (1901) . . . 6 C. W. N., 614

4.—Discretion of Court—*Appeal—Civil Procedure Code*, s. 564—*Indian Limitation Act*

SPECIAL OR SECOND APPEAL—*continued.***1. ORDERS SUBJECT OR NOT TO APPEAL—***continued.*

(*XV of 1877*), s. 6.—*Held* that no second appeal will lie where a Court of first appeal has disallowed the appellant's plea of excuse for not having filed his

5.—Order absolute for foreclosure—*Second Appeal—Civil Procedure Code (Act XIV of 1852)*, ss. 244 and 558—*Decree, execution of.*—When an order absolute for foreclosure of mortgaged property has been made, any question that arises afterwards as to that order absolute is not a question relating to the execution of a decree, within the meaning of s. 244 of the *Civil Procedure Code*. Therefore no second appeal lies from an order disposing of such a question. *Akikunniss Bibee v. Roop Lal Dass* (1897), *I. L. R.*, 25 Calc., 138, referred to. *TANA PADO GHOSZ v. KAMINI DAS* (1901)

[*I. L. R.*, 28 Calc., 644

6.—Order as to costs.—A second appeal lies, as to costs, against an appellate decree. *BRUGBARTI PAL v. MAHOMED ALI* (1903) . . . 7 C. W. N., 647

within the meaning of s. 2 of the *Civil Procedure Code*, and therefore no first or second appeal lies therefrom. *Jagannath Singh v. Budhan* (1895), *Jagannath Singh v. Budhan* (1895), *Jagannath Singh v. Budhan* (1895)

Rox (1901) . . . *I. L. R.*, 29 Calc., 80

8.—Order passed in appeal under *Civil Procedure Code*, s. 558—*Civil Procedure Code (Act XIV of 1852)*, ss. 493, 558—*Order by Munsif,*

the District Judge, who set aside his order and remanded the petition to the Munsif. Against this

SPECIAL OR SECOND APPEAL— continued.

B. GROUNDS OF APPEAL—concluded.

(a) QUESTIONS OF FACT—concluded.

plaintiffs, who were the sons of Babaji, filed this suit to recover the land. They alleged in the plaint that Anpurnabai had been granted this land by her step-son Babaji by way of maintenance for her life, and they contended that, therefore, their right of suit did not arise until her death. The defendants pleaded adverse possession. They contended that Anpurnabai had held adversely to Babaji and to his sons (the plaintiffs). No evidence was given by the plaintiffs of the alleged grant of the land to Anpurnabai for her life by way of maintenance. The lower Court dismissed the suit. On appeal, the District Judge reversed the decision and passed a decree for the plaintiffs. In his judgment he said: "The plaint states that Anpurnabai had this land for maintenance, and, in the complete absence of even the slightest information about Babaji and Ragho, confirming with which second appeal. (1902)

[*See also* *ibid.*, 617

(b) EVIDENCE, MODE OF DEALING WITH.

18.—*Admission or rejection of evidence—Civil Procedure Code, ss. 593, 595—Appeal—Admission of additional evidence in appeal—Discretion of Court.*—The refusal by an Appellate Court to exercise the discretion vested in it by s. 593 of the Code of Civil Procedure, with respect to the admission of additional evidence, would be an error or defect in procedure, within the meaning of s. 584 of the Code, because s. 593 distinctly implies that discretion must be exercised. But a refusal, in the exercise of discretion, to admit additional evidence is undoubtedly not such an error or defect. *RAM PRASAD v. KALU* (1900) I L R, 23 All, 121

17.—*Error.*—An erroneous view of evidence involves an error of law. *IASWAR CHUNDER SANTRA v. SATISH CHUNDER GRI* (1902)

[I L R, 30 Calc., 207; s.c., 7 C. W. N., 126

4. OTHER ERRORS OF LAW OR PROCEDURE.

(a) DISCRETION, EXERCISE OF.

18.—*Limitation Act (IX of 1877), s. 5—"Sufficient cause" for not presenting appeal within prescribed period—Interference with exercise of discretion by Appellate Court.*—A mere difference in view on the part of the High Court, as to the mode in which the discretion conferred by s. 5 of the Limitation Act ought to have been exercised by the lower Appellate Court in admitting an appeal, is in itself no ground of interference by the High Court. *PER HIS ARNOLD WHITE, C.J.* (MOORE, J., concurring).—The test is, has the discretion been exercised after appreciation and consideration of all the facts which are material for the purpose of enabling the Judge to exercise a judicial discretion, and after the application of the right principle

SPECIAL OR SECOND APPEAL— continued.

4. OTHER ERRORS OF LAW OR PROCEDURE— concluded.

(a) DISCRETION, EXERCISE OF—concluded.

to those facts? If a discretion is exercised under the facts judicial had app tion was during the period of delay,—not whether he had been misled by the Munsif, or whether his proceedings before the Collector were *bona fide*. *PER BENSON, J.*—There is a wide distinction between the law of limitation in respect of suits and in respect of appeals. The "sufficient cause," referred to in s. 5 of the Limitation Act, apparently means, not only those circumstances which are expressly recognized as extending time, but also such circumstances as are not expressly recognized, but which may appear to the Court to be reasonable. *KICHILAPPA NAICKAR v. RAMANUJAM PILLAI* (1901)

[I L R, 25 Mad., 166

(b) VALUATION OF SUIT.

19.—*Under-valuation of suit—Admissibility of objection on second appeal.*—The defendant in a suit raised the objection that its valuation was that could be raised on second appeal. *GOVINDA MENON v. MARUNAKARA MENON* (1900)

[I L R, 24 Mad., 48

(c) PROCEDURE.

20.—*Civil Procedure Code (Act XIV of 1882), s. 531—Second appeal—Procedure.*—Case where in a second appeal the judgment of the lower Appellate Court was set aside on the ground that the procedure adopted by it in the trial of the case was not in accordance with law, which requires that all the facts and circumstances of the case should be taken into consideration. *BRUPAT RAI v. KALI RAI* (1901)

[6 C. W. N., 357

5. PROCEDURE IN SPECIAL APPEAL.

21.—*Civil Procedure Code (Act XIV of 1882), s. 531—Inferences of fact or of law.*—Case in which the High Court in second appeal reversed the judgment of the lower Appellate Court, and considered the inferences of facts and also certain facts found by the first Court and not displaced by the lower Appellate Court, which set aside the judgment of the former. In second appeal the High Court has the power of considering whether the procedure adopted by the lower Appellate Court in dealing with the

SPECIAL OR SECOND APPEAL—concluded.**5. PROCEDURE IN SPECIAL APPEAL—concluded.**

facts is proper or not; and whether the inferences of fact or law derived by that Court from facts established to its satisfaction are well founded or not. *PROTAP NARAIN SINGH DEB v. RAGHU RAM HAZRA* (1901) . . . 8 C. W. N., 185

SPECIAL DAMAGE.

See RIGHT OF SUIT—OBSTRUCTION OF PUBLIC HIGHWAY.

See RIGHT OF WAY. 8 C. W. N., 187

See SLANDER. I. L. R., 28 Calc., 452

SPECIAL LEAVE TO APPEAL.

See PRIVY COUNCIL, PRACTICE OF—SPECIAL LEAVE TO APPEAL.

SPECIAL POLICE OFFICER.

See POLICE ACT (V of 1861), ss 17, 19.
[I. L. R., 28 Calc., 411]

SPECIFIC PERFORMANCE.

See ARBITRATION—AWARDS—ENFORCE-
ING AWARDS I. L. R., 23 All., 285
" 24 All., 164

See COMPROMISE—CONSTRUCTION, ETC.,
OF DEEDS OF COMPROMISE.
[7 C. W. N., 158]

See RELINQUISHMENT OF, OR OMISSION
TO SUE FOR, PORTION OF CLAIM
[I. L. R., 28 I. A., 221]

See RIGHT OF SUIT—POSSESSION, SUITS
FOR—CO-DEFENDANTS.
[8 C. W. N., 314]

1. GENERALLY.

enforce specific performance ceases upon the death of the person with whom the contract is made, and

NATH MOOKENJEE v. KALI PRASAD JOSHUA (1902)
[I. L. R., 30 Calc., 265;
s.c., 7 C. W. N., 229]

SPECIFIC PERFORMANCE—concluded.**2. SPECIAL CASES.**

2.—Agreement to lease—Subsequent lease to third party taking in good faith without notice of agreement—Act I of 1877 (*Specific Relief Act*), s. 18.—S^{rs} agreed to lease certain immovable property to W for a term of fifteen years,

as enabled him to carry out his agreement, and that,

3.—Agreement to sell—Act IX of 1872 (*Indian Contract Act*), s. 65—Act XV of 1877 (*Indian Limitation Act*), Sch. II, Art. 97—Suit for specific performance—Agreement declared unenforceable—Alternative claim for refund of consideration paid thereunder—Limitation.—The defendants, against whom a decree for foreclosure was outstanding, agreed to sell certain immovable property to the plaintiff, and the plaintiff paid into Court, as part of the consideration, the amount due by the defendants under the foreclosure decree. The defendants neither created a mortgage of the property

was governed, as to limitation, by Art. 97 of the second Schedule to the Indian Limitation Act, 1877, and was not barred by limitation, inasmuch as limitation only began to run from the date of the High Court's decree declaring the agreement to sell

SPECIFIC RELIEF ACT (I OF 1877).

See VENDOR AND PURCHASER—INVALID SALES . I. L. R., 26 Bom., 159

—s. 9—

See APPEAL—EXECUTION OF DECREES—QUESTIONS IN EXECUTION.

[I. L. R., 26 Mad., 428

See LIMITATION ACT, 1877, SCH. II, ART. 3 . 7 C. W. N., 218

See POSSESSION—SUITS FOR POSSESSION. [I. L. R., 26 Mad., 514

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

[I. L. R., 27 Bom., 302

See TITLE—MISCELLANEOUS CASES.

[I. L. R., 25 Mad., 448

1.—*Hdt*—Suit to recover possession of a *hdt*—Delivery of possession—Incorporeal right—Illegal disposition—A *hdt*, the possession of which is held by collecting tools or rents, is not "immovable property," within the meaning of s. 9 of the

[I. L. R., 29 Calc., 614

2.—Constructive possession—Collusion by tenant with the trespasser—Refusal by the tenant to bring a suit—Right of suit—S. 9 of the Specific Relief Act contemplates the case of a person who, being in physical possession of property, is dispossessed. So, where plaintiff was in constructive possession of a plot of land through his tenant, and the latter was dispossessed: *Held* that the plaintiff had no right to maintain a suit under s. 9 of the Specific Relief Act. *Held, further*, that plaintiff was not entitled to bring a suit, even where, subsequent to such dispossession, the tenant, in collusion with the person who dispossessed, refused to bring a suit. SONATON SHOME v. HULIM (1902) [5 C. W. N., 616

3.—Civil Procedure Code, s. 43—Summary suit for possession Plaintiff restored to possession—Subsequent suit by plaintiff for mesne profits—Burden of proof—One Lachmi Narain died possessed of certain immovable property. He left him surviving a widow, Mukhta Kunwar. Narain Das obtained possession of some portion of the said immovable property, as he alleged, under a lease from Mukhta Kunwar, and held possession, at any rate for some months.

a suit against Shoo Kumar to recover mesne profits for the time during which he was out of possession. As to this suit, it was *Held* (1) that the suit was not liable to be defeated by reason of s. 43 of the Code

SPECIFIC RELIEF ACT (I OF 1877)—continued.

—s. 9—concluded.

of Civil Procedure; and (2) that, as to the other issues arising in the suit, the first was, whether the defendant was the true owner of the property, the burden of proving which was on him; and, secondly, if the defendant established his title, whether the plaintiff had such an interest in the property, under the lease set up by him or otherwise, as would entitle him to remain in possession as against the defendant. SHEO KUMAR v. NARAIN DAS (1902) [I. L. R., 24 All., 501

—s. 18—

See SPECIFIC PERFORMANCE—SPECIAL CASES . I. L. R., 23 All., 119

—s. 23, cl. (6)—

See SPECIFIC PERFORMANCE—GENERALLY. [I. L. R., 30 Calc., 285

—cl. (c)—

See COMPROMISE—REMEDY ON NON-PERFORMANCE OF COMPROMISE [5 C. W. N., 388

—s. 27—

See MORTGAGE—REDEMPTION—RIGHT TO REDEEM . I. L. R., 24 Mad., 448

See RIGHT OF SUIT—POSSESSION, SUITS FOR—CO-DEFENDANTS [5 C. W. N., 314

—s. 39—

See ARBITRATION—AWARDS—VALIDITY OF AWARDS, AND GROUNDS FOR SETTING THEM ASIDE . I. L. R., 25 Bom., 10

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.

[L. R., 29 I. A., 203

I. L. R., 27 Bom., 607

See LIMITATION ACT, 1877, SCH. I, ART. 91 . I. L. R., 27 Bom., 560

—s. 42—

See CLAIM TO ATTACHED PROPERTY.

[I. L. R., 24 Mad., 20

See DECLARATORY DECREE, SUIT FOR—

SUITS CONCERNING DOCUMENTS;

[L. R., 29 I. A., 203

ENDOWMENT;

[I. L. R., 28 Mad., 450

MISCELLANEOUS SUITS.

[I. L. R., 24 Mad., 275

24 All., 170

" 25 Mad., 504

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW—SETTLING ALIENATIONS, AND WASTF.

[5 C. W. N.,

—s. 45—

See HAGENET-CARRIAGE ACT (BOM.

VI OF 1863), s. 11

[I. L. R., 27

SPECIFIC RELIEF ACT (I OF 1877)—
concluded.—s. 45—*concluded.**See* POLICE ACT (XLVIII OF 1860), ss. 11, 12
[I. L. R., 26 Bom., 396]—Practice.—*Per* RUSSELL, J.—Under rule 577 of

—s. 53—

See INJUNCTION—UNDER CIVIL PROCEDURE CODE . I. L. R., 27 Bom., 357

—s. 54—

See INJUNCTION—UNDER CIVIL PROCEDURE CODE;
[I. L. R., 27 Bom., 357]

SPECIAL CASES—

BREACH OF AGREEMENT;

[I. L. R., 26 Mad., 168]

OBSTRUCTION OR INJURY TO
RIGHTS OF PROPERTY

[I. L. R., 26 Bom., 735]

POSSESSION OF JOINT PROPERTY.
[I. L. R., 29 Cal., 500]

—s. 56—

See BOMBAY DISTRICT MUNICIPAL ACT
(BOM. ACT III OF 1901), ss. 82 (c) AND
86 . . . I. L. R., 27 Bom., 403*See* INJUNCTION—UNDER CIVIL PROCEDURE CODE;
[I. L. R., 27 Bom., 357]SPECIAL CASES—BREACH OF
AGREEMENT;

[I. L. R., 26 Mad., 168]

—s. 57—

See INJUNCTION—SPECIAL CASES—BREACH
OF AGREEMENT.

[I. L. R., 26 Mad., 168]

SPLITTING CAUSE OF ACTION.*See* RELINQUISHMENT OF, OR OMISSION TO
SUE FOR, PORTION OF CLAIM.**SPLITTING OFFENCES.***See* ROBERTY . . . 5 C. W. N., 372**STAMP***See* COURT-FEES ACT.*See* STAMP ACT.*See* VALUATION OF SUIT.

—deficiency in—

See LIMITATION ACT, 1877, s. 4
[I. L. R., 27 Bom., 330]**STAMP ACT (I OF 1879).**

—s. 7—

—Instrument relating to "several distinct
matters"—Consideration for lease being rent**STAMP ACT (I OF 1879)—concluded.**—s. 7—*concluded.*payable each month and one month's rent
month to month in advance in the year 1877-78

—s. 16—

—"Stamped at the time of execution"—Stamp
Act (I of 1879)—Affixing and cancelling stamp
immediately after signature—Letters Patent,
Art. 12—Part of the cause of action—Pro-
missory note payable in Madras or Secunderabad
—Payments of interest in Madras—Jurisdiction
—A promissory note was executed in plaintiff's favour
at Vizianagram, payable in Secunderabad or Madras
Payments of interest due on the note were made in

—Sch. I, Art. 1—

—Limitation Act (XV of 1877), s. 19, Exp. 1,
Sch. II, Art. 56—Acknowledgment of debt, un-
stamped—Tankha—Stamp-duty—Evidences of debt.
—The mere fact of a document being an acknowledg-
ment of a debt, within the meaning of s. 19 of
the Limitation Act, would not make it liable to a
stamp-duty under Sch. I, Art. 1, of Act I of 1879.
There are other conditions required to be fulfilled,
one of which being that it should be intended to
supply evidence of a debt. *Birya Ram v. Raj-
mohan Roy* (1931), I. L. R., 8 Calc., 232;**STAMP ACT (II OF 1899).**—Bill of Exchange—Sufficiency of stamp—
Construction of instrument—In determining the
question whether a particular instrument is

—ss. 2 and 7, and Sch. I, Art. 47, cl. A—

See BILL OF LADING.

[I. L. R., 30 Calc., 565]

STAMP ACT (II OF 1899)—continued.

—s. 5—

Agreement with numerous landholders for mining rights—Community of interest—Stamp—A Company, having obtained from the Secretary of State for India the right to search for and work minerals in a certain district, prepared an indenture with the object that it should be executed by numerous persons who were landholders and owners of surface and mining rights over the lands comprised in that district. By the indenture, each intended executant, for a consideration of one rupee and a royalty, granted to the company a license to prospect and work upon a piece of land belonging to him, and covenanted to sell or lease the mining rights over it, if required. The executant further covenanted to indemnify the Company from claims that might be made by other persons, and undertook not to sell the mining rights to any other person for fifty years: *Held* that the instrument was chargeable with the aggregate amount of the duties with which separate instruments relating to the same matter would be chargeable. Upon the face of it, the instrument dealt with several distinct matters, namely, with agreements with several persons with regard to their separate property; and the proper stamp to be affixed was an eight-anna stamp, or as many such stamps as there were separate landholders who were made parties to the agreement. *Held, also*, that the instrument did not contain distinct agreements with any one *raiyat*. REFERENCE UNDER STAMP ACT, s. 57 (1900)

[I. L. R., 24 Mad., 176]

—s. 5 and Sch. I, Art. 35—

Lease for three years, containing covenant by lessor to renew, at option of lessee, for a further

s. 57 (1901) . . . I. L. R., 25 Mad., 3

—s. 7—

See ante, ss. 2 AND 7.

—s. 24 and Sch. I, Art. 23—

Conveyance—Havala—Letter by a debtor, authorising payment to his creditor of money due to him (the debtor) by a third person—The defendant authorized the plaintiff, his creditor, to receive a sum of money on his behalf due to him by the Panjrapol authorities at Bhiwandi, by a letter which ran as follows:—"To The Daroga of the Panjrapol, Bhiwandi. I, Gau bin Halia of Khoni, beg to apply that I have completely fulfilled the agreement to supply fodder for Samrat year 1256, and that the sum of Rs22, due to me on

STAMP ACT (II OF 1899)—continued.

—s. 24 and Sch. I, Art. 23—concluded.

account, should be made over, on my behalf, to Shet

TO THE MASTER, it fell within the definition of "conveyance" in the Indian Stamp Act (II of 1899), and should be stamped as such. NANDUBAI AYAL MANGALKAS BHANJI v. GAU BIN HALIA BAGAL (1902) . . . I. L. R., 27 Bom., 150

—ss. 32 and 57—

Reference to High Court—Determination by Collector, as to duty leviable, final—"Case"—Jurisdiction of High Court—An adjudication by a Collector, under the powers conferred on him by s. 31 of the Stamp Act, 1899, as to the duty with which an instrument is chargeable, is, by s. 32 of that Act, final, and such a case cannot be referred by the Revenue-authorities to the High Court, under s. 57 of the Stamp Act, for an adjudication. REFERENCE UNDER STAMP ACT, s. 57 (1901)

[I. L. R., 25 Mad., 751]

—s. 33—

—*Seizure of documents under search-warrant*

—Document that "comes" before a Magistrate.

—Complaint having been made against a person for having committed offences under ss. 64 (c) and 68 (c) of the Stamp Act, 1899, the Magistrate issued a search-warrant, under which certain documents were seized and impounded under s. 33 (2)

the production of documents under a search warrant. KING-EMPEROR v. BALU KUPPATYAN (1901)

[I. L. R., 25 Mad., 525]

—ss. 35 and 42—

Stamp—Penalty—Unstamped receipt—In applying proviso (b) to s. 35 of Act II of 1899, the Court should not levy the duty of one anna as well as the penalty of one rupee; and, when a receipt is admitted in evidence under the proviso above referred to, it is not necessary that the receipt should be endorsed in the manner provided for in s. 42. REFERENCE UNDER s. 57 OF ACT II OF 1899 (F.N., 1902) . . . I. L. R., 24 All., 374

—s. 37—

See post, Sch. I, Art. 1.

—s. 42—

See ante, ss. 35 AND 42.

—s. 57—

See ante, ss. 32 AND 57.

STAMP ACT (II OF 1899)—continued.

—s. 57—concluded.

—Certificate by Deputy Collector under s. 40(1) (a), exempting document from stamp duty—Reference by Board of Revenue to High Court—Jurisdiction of High Court to decide the question—A

s. 40 (1) (a), certified that they were exempt from stamp duty. The Inspector-General of Registration disagreed with the opinion formed by the Deputy Collector, and reported the matter to the Board of Revenue for orders. The Board of Revenue referred the question as to the stamp duty, if any, payable on the documents to the High Court, under s. 57 of the Act: *Held* (the Chief Justice dissenting) that the High Court had no jurisdiction to decide the question. REFERENCE UNDER STAMP ACT, s. 57 (1901). I. L. R., 25 Mad., 753

—s. 89—

SCHEDULE I.

—Art. I—

Sch.
India

1899,
postage stamp instead of a receipt stamp—Such stamp not "a stamp of sufficient amount but improper description"—S. 37 of the Indian

Improper description "a description of stamp appropriate to purposes altogether outside the Stamp Act, but is confined to a stamp which is used for the purpose of denoting the stamp duty chargeable on an instrument, but which is improper in a particular

STAMP ACT (II OF 1899)—continued.

SCHEDULE I—continued.

—Arts. 1 and 5—

2.—Acknowledgment—Stamp—Agreement.—Plaintiff sued upon an acknowledgment passed by the defendant to the following effect:—“This day rupees two hundred and forty-one I received. The interest thereon is by agreement fixed to be at the rate of $\frac{1}{2}$ per cent. per month. This is the account in respect of the same.” The acknowledgment bore an anna stamp. *Held* that the above acknowledgment was an agreement, and, as such, required an eight-anna stamp. LAXUMIBAI v. GANESH RAGHUNATH (1900)

[I. L. R., 25 Bom., 373.]

—Art. 5—

—Cl. (b)—Agreements to deliver goods in exchange for goods—Price—Agreements or memoranda of agreements to deliver goods in

—Art. 23—

See ante, s. 24 AND SCH. I, ART. 23.

See post, ARTS. 55, 23 AND 59 (c).

—Art. 24—

—Copy—Extract—Account books—Civil Procedure Code (Act XIV of 1859), ss. 141A, 142A—

—Arts. 33 and 40—

—Mortgage—Further charge—Stamp—Certain property was mortgaged, with possession, for Rs180, by a deed of mortgage dated 23rd May, 1895. The deed was on a stamp paper of Rs2 (two). On 23rd August, 1899, the same property was re-mortgaged to the same mortgagee for Rs250, made up of Rs150, the consideration for the former deed, and another sum of Rs70 due to the mortgagee. This second deed was written on a stamp paper of Rs1. *Held* that the second deed was not intended to operate merely

—Art. 35—

See ante, s. 11 AND SCH. I, ART. 35.

—Art. 40—

See ante, ARTS. 32 AND 40.

—Art. 47, cl. A—

See ante, ss. 2 AND 7 AND SCH. I, ART. 47, CL. A.

STAMP ACT (II OF 1899)—concluded.**SCHEDULE I—concluded.****—Art. 47, cl. D—**

See **THE HIMALAYAN LIFE ASSURANCE CO. LTD.** (1900). I. L. R., 25 Bom., 376

to the rules and regulations of this society from time to time in force, insured your life in the class of this society at the age of

"The name of Mr. , residing at , has been registered as that of the person to whom the amount due under the rules of this society after your death should be paid." Held that the above certificate was a policy of life insurance, within the meaning of Art. 47, cl. D, of Act II of 1899, and as such liable to pay *ad valorem* duty. *In re THE HIMALAYAN LIFE ASSURANCE CO. LTD.* (1900). I. L. R., 25 Bom., 376

—Arts. 55, 23, and 62 (c)—

Stamp—Conveyance—Release—Document executed by a benami purchaser professing to relinquish in favour of the real purchaser any claims which he might have in virtue of the purchase.—Held that a document, by means of which the certified purchaser of property sold by auction in execution of a decree purported to relinquish, in favour of a person whom he alleged to be the real purchaser of the property, any claims which he might have in respect of the property by reason of his being the certified purchaser thereof, was to be stamped as a release, according to Art. 55 of the first Schedule to the Indian Stamp Act, 1899. *REFERENCE UNDER s. 57 OF ACT II OF 1899 (F.N., 1902)*. I. L. R., 24 All., 372

—Art. 62—

See ante, ARTS. 55, 23 AND 62 (c).

STATUTE.**—18 EHz., c. 5—**

See **TRANSFER OF PROPERTY ACT, s. 53.**
[I. L. R., 25 Bom., 202
" 27 Bom., 146]

—27 EHz., c. 4—

See **TRANSFER OF PROPERTY ACT, s. 53.**
[I. L. R., 25 Bom., 202]

—11 & 12 Vict., c. 21—

See **INSOLVENT ACT.**

—20 & 21 Vict., c. 55, s. 28—

See **DIVORCE ACT (IV OF 1869), ss. 7, 11 AND 45.** 7 C. W. N., 504

—21 & 22 Vict., c. 108—

See **CROWN LANDS.**
[I. L. R., 26 Mad., 268]

—22 & 23 Vict., c. 41—

See **CROWN LANDS.**
[I. L. R., 26 Mad., 268]

STATUTE—concluded.**—24 & 25 Vict., c. 67—**

See **BOMBAY CITY IMPROVEMENT ACT.**
[I. L. R., 27 Bom., 424]

—24 & 25 Vict., c. 104—

See **TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER.**
[I. L. R., 28 Calc., 709]

—ss. 14, 15—

See **SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.**
[I. L. R., 30 Calc., 588]

—s. 15—

See **REVISION, CRIMINAL CASES—GENERAL RULES FOR EXERCISE OF POWER.**
[I. L. R., 24 All., 315]

See **WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.**
[I. L. R., 30 Calc., 508]

—32 & 33 Vict., c. 28—

See **CROWN LANDS.**
[I. L. R., 28 Mad., 268]

—33 & 34 Vict., c. 59—

See **CROWN LANDS.**
[I. L. R., 25 Mad., 268]

—37 & 38 Vict., c. 27—

See **JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION—OFFENCE COMMITTED ON THE HIGH SEAS.**
[I. L. R., 25 Bom., 636]

—44 & 45 Vict., c. 58—

See **ARMY ACT, 1881.**

—46 & 47 Vict., c. 52—

See **INSOLVENT ACT (11 & 12 Vict., c. 21), s. 40.** I. L. R., 26 Bom., 623

—53 & 54 Vict., c. 27—

See **ADMIRALTY OR VICE-ADMIRALTY JURISDICTION.** I. L. R., 28 Calc., 402

—55 & 56 Vict., c. 14—

See **BOMBAY CITY IMPROVEMENT ACT.**
[I. L. R., 27 Bom., 424]

—58 Vict., c. 7—

See **ARMY (ARMY) ACT, 1895.**

STATUTES, CONSTRUCTION OF.

See **PREROGATIVE OF THE CROWN.**
See **SIGNATURE.** I. L. R., 24 All., 319

—Codes—

See **BENGAL TENANCY ACT (VIII OF 1885), s. 5 (5).** 6 C. W. N., 825

STATUTES, CONSTRUCTION OF— concluded

—distinction between enactments affecting vested rights and those regulating procedure—

See PROVIDENT FUNDS ACT, s. 4
[I. L. R., 26 Mad., 440]

—issue of orders before commencement of Statute—

See BENGAL IRRIGATION ACT, ss. 1, 6
[I. L. R., 28 Calc., 487]

—the ejusdem generis rule—

See MOOKTEAR.
[I. L. R., 29 Calc., 890]

See PENAL CODE, s. 216B
[I. L. R., 25 All., 261]

See RENT, SUIT FOR.
[I. L. R., 28 Calc., 485]

1.—Codifying Statute.—In dealing with the interpretation of an Act intended to codify a particular branch of the law, the proper course is, in the first instance, to go on the language of the Statute.

the law previously stood. *Bank of England v. Fagiano* (1891), L. R. Cr. C., 107, followed *SARAT CHANDRA SHAH CHOWDHRY v. EMPEROR* (1902)
[I. L. R., 29 C. W. N., 301]

2.—Liberty of subject.—In construing a Statute which affects the liberty of the subject, the Courts should not only adopt the natural and ordinary construction, but should construe strictly expressions occurring therein. *BISSUMNATH SINGH v. QUEEN-EMPEROR* (1900). . . S. C. W. N., 108

Calc., 649, referred to. *LALA SURAJ PRASAD v. GOLAB CHAND* (1901)

[I. L. R., 28 Calc., 517; s.c. S. C. W. N., 640]

STATUTORY POWERS.

See RAILWAY COMPANY.
[I. L. R., 27 Bom., 344]

STAY OF EXECUTION.

See APPEAL TO PRIVY COUNCIL—STAY OF EXECUTION PENDING APPEAL.

See EXECUTION OF DECREE—STAY OF EXECUTION.

STAY OF PROCEEDINGS.

See ACCUSED PERSON.
[5 C. W. N., 110]

See FALSE EVIDENCE—GENERAL CASES.
[5 C. W. N., 44]

See LETTERS PATENT, HIGH COURTS,
1865, cl. 15.
[5 C. W. N., 781]

See MORTGAGE—FORECLOSURE—RIGHT TO FORECLOSURE,
[6 C. W. N., 654]

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE
[I. L. R., 30 Calc., 112]

See PRACTICE—
CIVIL CASES—STAY OF PROCEEDINGS;
CRIMINAL CASES—STAY OF PROCEEDINGS.

—until trial of test case—

See PRACTICE—CIVIL CASES—TEST CASE . . . I. L. R., 29 Calc., 140

STOCKS.

—confinement in—

See MADRAS REGULATION—1816—XI,
s. 10. . . I. L. R., 24 Mad., 271

STOLEN PROPERTY.

See CHARGE TO JURY—SPECIAL CASE—STOLEN PROPERTY.

See STAMP ACT (II of 1890), s. 69.
[I. L. R., 24 Mad., 319]

1. OFFENCES RELATING TO.

—Act XLV of 1860 (Indian Penal Code), ss. 224, 411—Escape from lawful custody—Actual thief arrested by private person whilst in possession of stolen property—S. 411 of the Indian Penal Code not applicable to the thief himself—S. 411 of the Indian Penal Code does not apply to the person who is the actual thief. Where, therefore, a person, whose bullock had been stolen in his absence, traced it to the house of the thief, and there and then arrested him, and made him over to a *chaukidar*, from whose custody he escaped, it was held that this was not an escape from lawful custody, within the meaning of s. 224 of the Code. *Seemle* that, if the owner of the bullock had himself been entitled to make the arrest, the subsequent custody of the prisoner by the *chaukidar* would have been a lawful custody. *Queen-Emperor v. Potada* (1889), I. L. R., 11 Mad., 450, referred to. *KING-EMPEROR v. JOHN* (1901). . . I. L. R., 23 All., 268

STOLEN PROPERTY—concluded.**2. DISPOSAL OF, BY THE COURT.**

2—Criminal Procedure Code (Act V of 1899), s. 517—Disposal of stolen property on conviction of the thief—Babashahi coin—Legal tender—Customary coin—A witness for the prosecution in a case of theft produced a sum of money in Babashahi (Baroda) coin (part of the stolen property), which the accused had paid to him in satisfaction of a debt. The accused was convicted.

right. The stolen coins were not current coin of the realm, and were neither by Statute nor by the law of merchants in British India legal tender. The property in them did not, therefore, pass by mere delivery, but remained in the complainant. *Collector of Salem (1873)*, 7 *Mad. H. C. Rep.*, 233, and *Empress v. Joggesur Mochi (1878)*, 1 *L. R.*, 8 *Calc.*, 379, distinguished. *IN RE MATHUR LALBHAI (1901)*. . . 1 *L. R.*, 25 *Bom.*, 702

STREET.

See PRIVATE STREET.

See PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE.

STRIDHAN.

See HINDU LAW—STRIDHAN.

STRIKING OFF PROCEEDINGS.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—STRIKING OFF PROCEEDINGS.

SUB-LETTING.

See LANDLORD AND TENANT—TRANSFER BY TENANT. . . 1 *L. R.*, 29 *Calc.*, 148 [6 *C. W. N.*, 916, 919]

See SALE FOR BREARS OF RENT—INCUMBRANCES. . . 1 *L. R.*, 38 *Calc.*, 205

SUBORDINATE JUDGE, JURISDICTION OF.

—*Act XII of 1887 (Bengal Civil Courts Act)*, s. 10—*Jurisdiction—Act XII of 1881 (N. W. P. Rent Act)*, s. 139—*Powers of Subordinate Judge in charge of the office of the District Judge—Revenue Court appeal—Held that a Subordinate Judge in temporary charge, under s. 10 of Act XII of 1887, at the office of the District Judge, is competent to take up and decide Revenue Court appeals which may be pending on the file of the District Judge. RAHMAT ALI KHAN v. ABDULLA (F.B., 1901)*. . . 1 *L. R.*, 23 *All.*, 455

SUBORDINATE MAGISTRATE.

—refusal of, to take proceedings—

See MAGISTRATE—POWERS OF MAGISTRATES. . . 1 *L. R.*, 29 *Calc.*, 242

SUBSTANTIAL INJURY.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—SUBSTANTIAL INJURY.

SUBSTANTIAL QUESTION OF LAW.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH AN APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.

SUBSTITUTION OF PARTIES.

See PARTIES—SUBSTITUTION OF PARTIES.

SUCCESSION.

See HEREDITARY OFFICES ACT (BOM. ACT III OF 1874), ss. 4, 5.

[1 *L. R.*, 25 *Bom.*, 470]

See HINDU LAW—

CUSTOM—INHERITANCE AND SUCCESSION;

ENDOWMENT—SUCCESSION IN MANAGEMENT;

INHERITANCE.

See INHERITANCE.

See MAHOMEDAN LAW—INHERITANCE.

See MALABAR LAW—INHERITANCE.

See RAJ, SUCCESSION TO.

—to istemfari mukuttari tenure—

See LEASE—CONSTRUCTION.

[1 *L. R.*, 30 *Calc.*, 883]

—to talukdari—

See OUDH ESTATES ACT (I OF 1869).

—*Nawab of Tonk—Primogeniture—Impartible estate—Special family custom—Effect of British settlement on tenure and its customs—Estates appertaining to Nawabship of Tonk—Grant of villages by Nawab as maintenance—Held, upon*

said family custom. The appellant being grantee from the Government of a pension fund, part of an hereditary cash allowance originally granted to his father, and also grantee of a village from his father for his subsistence: *Held* that, these grants being

SUCCESSION—concluded.

[I. L. R., 30 I. A., 190;
S.C. I. L. R., 30 Calc., 843]

SUCCESSION ACT (X of 1865).

—s. 48—

See PARDANASHIN WOMEN.
[5 C. W. N., 505]

—s. 58—

See PROBATE—OF WHAT DOCUMENTS
GRANTED . I. L. R., 29 Calc., 31

—s. 62—

See HINDU LAW—WIDOW—POWER OF
WIDOW—POWER OF DISPOSITION OR
ALIENATION . . . 5 C. W. N., 300

—s. 90—

See WILL—CONSTRUCTION.
[I. L. R., 26 Mad., 433;
6 C. W. N., 321]

—s. 94—

See WILL—CONSTRUCTION.
[I. L. R., 26 Mad., 433]

—s. 98—

—Hindu law—Bequest to daughter and her
sons from generation to generation—Testator

—s. 105—

See WILL—CONSTRUCTION.
[6 C. W. N., 321;
I. L. R., 26 Mad., 533]

—s. 178—

See ADMINISTRATOR.
[I. L. R., 27 Bom., 103]
See EXECUTOR.
[I. L. R., 27 Bom., 281]

SUCCESSION ACT (X of 1865)—concluded.

—s. 181—

See ADMINISTRATION.
[I. L. R., 26 Bom., 267]

—s. 187—

See ADMINISTRATION.
[I. L. R., 26 Bom., 267]

—s. 190—

See REPRESENTATIVE OF DECEASED PER-
SON . . . I. L. R., 30 Calc., 1044

—s. 240—

See LETTERS OF ADMINISTRATION.
[I. L. R., 24 Mad., 120]

See PROBATE—POWER OF HIGH COURT
TO GRANT . I. L. R., 24 Mad., 120

—s. 246—

See LETTERS OF ADMINISTRATION.
[I. L. R., 25 All., 355]

—s. 268—

See ADMINISTRATOR.
[I. L. R., 27 Bom., 103]

—s. 331: "Hindu" includes Sikh—

See PROBATE AND ADMINISTRATION ACT
(V of 1881) . . . 7 C. W. N., 395

SUCCESSION CERTIFICATE ACT
(VII OF 1889).

See APPEAL—CERTIFICATE OF ADMINIS-
TRATION (ACT VII of 1889).

See CERTIFICATE OF ADMINISTRATION—
ACT VII of 1889.

—Succession certificate—Succession Certificate
Act (VII of 1889), object of—The object of the
Succession Certificate Act (VII of 1889) is to obtain
the appointment of someone to give a legal discharge
to debtors to the estate for the debts due, and not to
have nice and intricate questions of law as to the
rights of parties to the estate of the deceased decided
on an application under it. GUNINDRA PRASAD s.
JUGMALA BIBI (1903) . I. L. R., 30 Calc., 581

—ss. 6, 7 and 9—

... of dispute
proceeding
certificate on
card—Minor
rising under
"1889) are to
be determined by a summary proceeding, i.e., by
a short inquiry leading up to and resulting in a
rapid decision, in contrast with the lengthy
investigation which may be required for the more
tardy determination of a regular suit. The nature
of the inquiry must depend on the circumstances
of each case. An application by a guardian of
a minor is not contemplated by s. 6, cl. (d),
of Act VII of 1889, which only permits the
petitioner, who claims the right for himself, to

SUCCESSION CERTIFICATE ACT (VII OF 1889)—concluded.

—ss. 6, 7 and 8—concluded.

— certificate of 1889), the right . . . ld not be summarily disposed of: *Held* that the Judge ought to have decided the *prima facie* right of the applicant under cl. 3 or cl 4 of a 7 of the Act, without waiting to decide the issue raised as to the adoption. *GULABCHAND GAMKRAJI v. MOTI CHATRAJI* (1900) . . . I. L. R., 25 Bom., 523

—s. 7—

—*Nature of inquiry—Summary inquiry—Civil Procedure Code (Act XIX of 1892), s. 141.*—There must be an inquiry before a certificate is granted under the Succession Certificate Act; but the inquiry is to be a summary one; and, when a Judge has legal evidence before him on which he comes to a proper conclusion, his proceedings cannot be set aside because they seem not to have been of a very protracted nature. Such a decision does not in any way bar the rights of the parties, nor does it establish the right of the party to the debt to collect which the certificate is granted. *Hurri Krishna Panda v. Balabhadra Panda* (1896), I. L. R., 23 Calc., 431; *Radha Rani Dass v. Brindaban Chandra Bosack* (1897), I. L. R., 25 Calc., 320; *Siramma v. Subbamma* (1894), I. L. R., 17 Mad., 477; *Dharmaya Sangappa v. Savana Malapa* (1895), I. L. R., 21 Bom., 53, referred to. *JIGRI BEGUM v. SYED ALI NAWAB* (1901)

[5 C. W. N., 494]

—s. 8—

See ante, ss. 6, 7 AND 9.

—ss. 10, 18—

See APPEAL—CERTIFICATE OF ADMINISTRATION . I. L. R., 25 Mad., 634

SUCCESSION (PROPERTY PROTECTION) ACT, 1841.

See ACT—1841—XIX.

SUDRAS.

See HINDU LAW—

INTERFERENCE—ILLEGITIMATE CHILDREN;

PARTITION—RIGHT TO PARTITION—ILLEGITIMATE CHILDREN.

[I. L. R., 25 Mad., 429]

SUIT.

See ABATEMENT OF SUIT.

See CONTRIBUTION, SUIT FOR

See DISMISSAL OF SUIT.

See EJECTMENT, SUIT FOR.

See JURISDICTION—SUITS FOR LAND.

See MINOR—REPRESENTATION OF MINOR IN SUITS.

SUIT—continued.

See PAUPER SUIT.

See PRACTICE—CIVIL CASES—OPENING CASE FOR DEFENDANT.

[I. L. R., 29 Calc., 32]

See RIGHT OF SUIT.

See VALUATION OF SUIT.

—adjustment of—

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION

[7 C. W. N., 180]

—by or against Receiver—

See RECEIVER.

[I. L. R., 30 Calc., 598]

—change in form of—

See PLAINT—AMENDMENT OF PLAINT.

See VARIANCE BETWEEN PLEADING AND PROOF.

—for administration—

See HINDU LAW—REVERSIONERS—ADMINISTRATION SUIT BY.

[I. L. R., 29 Calc., 260]

See LETTERS PATENT, HIGH COURTS, 1895, CL. 12 I. L. R., 29 Calc., 315

—for false imprisonment—

See FALSE IMPRISONMENT.

[I. L. R., 30 Calc., 872]

—for money charged on immovable property—

See LIMITATION ACT, 1877, SCH. II, ART. 182

—for possession—

See LIMITATION ACT, 1877, SCH. II, ART. 14 . I. L. R., 29 Calc., 367

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.

[I. L. R., 29 Calc., 682]

—institution of—

See LIMITATION ACT, s. 4.

—restoration of—

See CIVIL PROCEDURE CODE, s. 89.

—revival of—

See PARTIES—SUBSTITUTION OF PARTIES.

—to enforce registration—

See REGISTRATION ACT (III OF 1877), s. 77 . . I. L. R., 30 Calc., 632

—to recover possession of immovable property—

See DOCUMENT.

[I. L. R., 30 Calc., 433]

SUIT—concluded

—to recover surplus sale-proceeds—

See LIMITATION ACT, 1877, Sec. II,
ART. 29 . I. L. R., 30 Calc., 440**SUITS VALUATION ACT (VII OF 1887).**

See VALUATION OF SUIT.

—s. 11—

See APPELLATE COURT—GENERAL DUTY
OF APPELLATE COURT
[I. L. R., 25 All., 174]**SUMMARY PROCEDURE.**See NEGOTIABLE INSTRUMENTS, SUM-
MARY PROCEDURE ON.See SUCCESSION CERTIFICATE ACT, ss 6,
7 AND 9 . I. L. R., 25 Bom., 523**SUMMARY TRIAL.**See CRIMINAL PROCEEDINGS.
[5 C. W. N., 252]See FALSE CHARGE.
[I. L. R., 23 Calc., 251]

1.—Complaint disclosing facts constituting offence of a graver nature—*Process, issue of—Trial for minor offences—Magistrate, jurisdiction of—Illegality—Criminal Procedure Code (Act V of 1893), s. 260.*—Where the complaint

mission of a much more serious offence than the offences for which the Magistrate had held a summary trial and the

regular trial
BISHT SHAKI v. SAKH MOLLAH (1902)

[I. L. R., 23 Calc., 409; s.c., 5 C. W. N., 713]
2.—Record of reasons for conviction—*Code of Criminal Procedure (Act V of 1893), s. 263 (A)—Omission of Magistrate to*

SUMMING UP EVIDENCE.

See CHARGE TO JURY.

SUMMONS.

See WITNESS—

CIVIL CASES—SUMMONING AND
ATTENDANCE OF WITNESSES;
[I. L. R., 24 Mad., 200]CRIMINAL CASES—SUMMONING
WITNESSES.**SUMMONS, SERVICE OF.**

—on juror—

See JURY—JURY IN SESSIONS CASES.
[11 C. W. N., 887]

1.—*Ex parte decree—Civil Procedure Code, ss. 89, 100, 101—Appeal—Service of summons on defendant residing out of British India—Burden of proof.*—Where a defendant, against whom an *ex parte* decree has been passed, appeals against that decree, it is sufficient in the first instance to establish that in the Court which passed the *ex parte* decree the necessary proof of service of summons on the defendant was not given by the plaintiff. It is not incumbent on the appellant to show that the summons was in fact not duly served.

A summons was issued under the summons was posted, but there must be some evidence of its having been received by the defendant. S. 100 of the Code of Civil Procedure is not limited in its application to defendant's residing within British India.
FAKIR-UD-DIN v. GHAFUR-UD-DIN (1900)

[I. L. R., 23 All., 89]

2.—*Civil Procedure Code, ss. 80, 109—Application to set aside a decree passed ex parte—Irregular service of summons.*—Where a

he must make further efforts to effect personal service.
SAXENA v. GAUR SHAHAI (1902)

[I. L. R., 24 All., 302]

SUPERINTENDENCE OF HIGH COURT.See SECURITY FOR GOOD BEHAVIOUR.
[5 C. W. N., 583]—Charter Act (24 & 25 Vict., c. 104),
s. 15—Criminal cases—See CRIMINAL PROCEDURE CODE, s. 146.
[I. L. R., 23 Calc., 382]See POSSESSION, ORDER OF CRIMINAL
COURT AS TO—LIKELIHOOD OF BREACH
OF THE PEACE.

[I. L. R., 23 Calc., 418]

See WITNESS—CRIMINAL CASES—SUM-
MONING WITNESSES.

[I. L. R., 30 Calc., 508]

SUPERINTENDENCE OF HIGH COURT—continued.

—Civil Procedure Code, s. 622—

See APPEAL—ARBITRATION.

[I. L. R., 29 Calc., 167

See ATTACHMENT—SUBJECTS OF ATTACHMENT—TRUST PROPERTY.

[I. L. R., 28 Calc., 574

See CALCUTTA MUNICIPAL CONSOLIDATION ACT (BEN. ACT II of 1888), s. 135.

[6 C. W. N., 480

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE, DEEDS OF COMPROMISE.

[I. L. R., 30 Calc., 613

See DECREE—ALTERATION OR AMENDMENT OF DECREE.

[I. L. R., 24 Mad., 646

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.

[I. L. R., 26 Bom., 631

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[6 C. W. N., 614

—criminal cases—

See REVISION—CRIMINAL CASES.

CIVIL PROCEDURE CODE, S 622.

1.—Arbitration—Award—Setting aside an award on ground of misconduct—Civil Procedure Code (Act XIV of 1882), ss. 521 and 622—Practice—Procedure.—Where an award, made under Chapter XXXVII of the Civil Procedure Code

the Civil Procedure Code. It is an interlocutory order, and may be a ground of appeal against the decree passed in that suit. DAKODAR THORAK DHARAY v. RAGHUNATH HARI (1902)

[I. L. R., 26 Bom., 651

2.—Counsel and client—Sust by client to recover fees paid to counsel—Cause of action—Status of a barrister practising as an advocate in the High Court for the North Western Provinces.

the District Judge held that the suit could not lie. On appeal, the District Judge held that the suit would lie, and gave the plaintiff a decree. Against this decision the defendant applied in revision.

SUPERINTENDENCE OF HIGH COURT—continued.

CIVIL PROCEDURE CODE, S. 622—continued.

11 Mad., 220; and Chenbasappa v. Lakshman

3.—Duty of High Court.—Where it appears that the Court of first instance, or of appeal, has exercised a jurisdiction not vested in it by law, the High Court is bound to interfere under its revisional powers. RAMASAMY CHETTIAR v. ONE, (1902)

[I. L. R., 28 Mad., 176

4.—Order amending a decree—Civil Procedure Code (Act XIV of 1882), ss. 206, 622, 623—Appeal—Second appeal—Review.—An order under s. 206, Civil Procedure Code, amending a decree, is not a decree; and no appeal lies against such an order. The proper remedy is by an application under s. 622, Civil Procedure Code. Surtia v. Ganga (1895), I. L. R., 7 All., 878, referred to and followed. Joy Kishen Mookherjee v. Ataoor Rohoman (1850), I. L. R., 6 Calc., 22, referred to. Kali Prasanna Dasu v. Lal Mohun

5.—Power of High Court—Code of Civil Procedure (Act XIV of 1882), ss. 310A, 622—“Exercised a jurisdiction not vested in it by law”, meaning of—Appeal.—Whether an order under s. 310A is subject to appeal or to revision under s. 622, Civil Procedure Code, depends upon the circumstances of each particular case. Where the purchaser is the decree-holder himself, and the question arises between him and the judgment-debtor, Chaudji Charan Mandal v. Banks

“419, anger, cable, (1895), aldar 114, a sale so to Court can interfere under s. 622, Civil Procedure Code, as the order is not merely an erroneous order but is made without jurisdiction. KEDAR NATH SINGH v. UMA CHANDAN (1900) . 6 C. W. N., 67

SUPERINTENDENCE OF HIGH COURT—continued.

CIVIL PROCEDURE CODE, S. 622—continued.

6.—Revision, High Court's power of, without application—Property, management of, by Court—Under the terms of s. 622, Civil Procedure Code, the High Court can deal with a case under that section without there being any application by any of the parties. *Gulam Mahammad v Saroda Mohan Maistra* (1900), 4 C. W. N. 693, which a Court can, on the mere application of the parties interested, take over the management of properties belonging to an estate, and pass such orders as would place them entirely beyond the reach of the judgment-creditors of the estate. *POORAN MAI v. JANKI PRASAD SINGH* (1901)

[I. L. R., 28 Calc., 880; s.c., 8 C. W. N., 114]

7.—Criminal Procedure Code (Act V of 1898), ss. 433, 439—Jurisdiction of High Court, under Criminal Procedure Code, to revise order according sanction which has been granted by a Civil Court—The High Court has no jurisdiction, under ss. 45 and 439 of the Code of Criminal Procedure, to vary an order passed by any Court other than a Criminal Court under cl. (b) or (c) of sub-s. (f) of s. 195 of the Code of Criminal Procedure, according sanction to institute a prosecution, or an order passed under sub-s. (6) of s. 195 revoking or refusing to revoke a sanction which has been given, or granting a sanction which under s. 622 of the Code of Civil Procedure, to revise such proceedings of a Civil Court, to which come within the terms of that section. *IN BE CHENNANAGODU* (1902)

[I. L. R., 26 Mad., 139]

8.—Religious Endowments Act (XX of 1883), s. 6—Vacancy in office of managing appointment by Civil Court—Jurisdiction of High Court to entertain petition to revise order appointing manager—An order made by a Civil Court under the powers conferred by s. 6 of the Religious Endowments Act is a judicial adjudication in the matter before it, and it is competent to the High Court to entertain a civil revision petition against such an order. *GOPALA AYYAR v. ARUNACHALLAM CHETTI* (1902)

I. L. R., 26 Mad., 85

9.—Leave to sue granted on application made by unverified letter and not presented to Court by applicant or pleader—Validity—Civil Procedure Code (Act XIX of 1892), ss. 622, 637—Maintenance of civil revision petition against order granting leave passed with material irregularity—Applications to District Court, under s. 18 of the Religious Endowments Act, for leave to sue should be duly verified, and presented either by the applicant in person or by his pleader. A grant of such leave on an unverified application not presented in Court is of the Code of Civil Procedure, within the meaning of s. 622 of the Code of Civil Procedure, and a civil revision petition lies from the order granting it. Omission to give notice of such an application to the person whom

SUPERINTENDENCE OF HIGH COURT—continued.

CIVIL PROCEDURE CODE, S. 622—continued.
it is intended to sue does not of itself render the leave, if granted, irregular. *Venkatappayya v. Venkatappaiah, Appeal No. 280 of 1896, 1 I. L. R., 24 Mad., 687, approved.* *ABDUL MITAN v. MUHAMMAD DAUD KHAN* (1901)

10.—Restriction on High Court's jurisdiction.—The High Court cannot interfere under s. 622 of the Code unless it is satisfied that the lower Court has acted in the exercise of its jurisdiction illegally. *Amir Hassan Khan v. Sheo Baksh Singh* (1894), 1 I. L. R., 11 Calc., 6, referred to. *KALI CHARAN SIRDAR v. SANAT CHUNDRE CHOWDHRY* (1903)

11.—Right of vakil to appear on Original side—Rule IV A, Part I, Chap. II, of the Rules of the High Court—Rule 71, *Belchambars' Rules and Orders* (2nd Ed.)—Revisional powers of the High Court in its Original jurisdiction—Appellate original side—A vakil has no right to appear on the Original side, in an application under s. 623 of the Civil Procedure Code, to move against any order of the Presidency Small Cause Court. Such revisional powers, when exercised by the Original side of this Court, fall within and form a part of its Ordinary Original civil jurisdiction. RE APPLICATION OF A VAKIL OF THE APPELLATE SIDE (1903)

7 C. W. N., 843

12.—Small Cause Court—Jurisdiction—out jurisdiction, to review orders passed without jurisdiction in the Presidency Small Cause Court—Bench consisting of the Chief Justice and another Judge—Charter Act 1824 & 25 Vict., c. 104, ss. 14, 15—Registrar—Presidency Small Cause Court, jurisdiction of—Ex parte decrees for default—Rules 68, 70, 92, 94 (framed by the High Court) under s. 9 of the Presidency Small Cause Act (1 of 1895).—By virtue of the power conferred under s. 14 of the Charter Act (24 & 25 Vict., c. 104), the Chief Justice, by constituting a Division Court consisting of himself and any other Judge of the High Court, can deal with applications against an order made by the Presidency Small Cause Court. *Shamsker Mandal v. Gaudera Narain Mitter* (1902), 1 I. L. R., 29 Calc., 439, explained. The Registrar of the Presidency Small Cause Court has no jurisdiction to entertain an application for new trial to set aside an ex parte decree made by him for default. *HALADHAR MAITI v. CHHOTTONA MAITI* (1903)

13.—Succession—Succession (Property Protection) Act (XIX of 1911), ss. 3, 6, 6.—Material irregularity—Want of jurisdiction—Act XIX of 1841, to recover possession of the properties of a deceased testator by summary suit, and for the appointment of a curator pending the determination of the suit, the District Judge

SUPERINTENDENCE OF HIGH COURT—concluded.

CIVIL PROCEDURE CODE, s. 622—concluded.

omitted to examine the complainant or inquire further under s. 11 of the Act but called for a report from the Collector under s. 2, and on receipt thereof made an order under s. 11 appointing a curator. Held (SUNDRAMANJA AYYAR, J., dissenting) that the order must be set aside, under s. 622 of the Code of Civil Procedure. The Judge was bound to hold an enquiry under s. 3 before appointing a curator under s. 5. The provisions of s. 3 are mandatory, and not merely directory. P. C. M. S. No. 100, 1901.

material irregularity. KRISHNABANI PANDIKONDAR v. MUTUKRISHNA PANNIKONDAR (1901)

[I. L. R., 24 Mad., 364]

SUPREME COURT, CALCUTTA.

—Charter of 1726—

See SLANDER.

[I. L. R., 23 Calc., 452]

SURETY.

| | |
|--------------------------------------|-----------|
| 1. LIABILITY OF SURETY | Col. 1099 |
| 2. ENFORCEMENT OF SECURITY | 1100 |
| 3. DISCHARGE OF SURETY | 1101 |

See RECOGNIZANCE TO APPEAR.

See RECOGNIZANCE TO KEEP PEACE.

See SECURITY FOR GOOD BEHAVIOUR.

—discharge of—

See ABATEMENT OF SURETY.

[I. L. R., 25 All., 206]

See RES JUDICATA—CAUSES OF ACTION—CONTINUING GUARANTEE

[I. L. R., 27 Bom., 418]

—execution against—

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION.

[I. L. R., 26 Mad., 258]

—liability of—

See GUARANTEE.

[I. L. R., 28 Calc., 597]

See PARTNERSHIP—SUITS RESPECTING PARTNERSHIP.

[I. L. R., 25 Bom., 606]

—position of legal practitioner becoming—

See MOORE v. 7 C. W. N., 281

1. LIABILITY OF SURETY.

1.—Death of judgment-debtor—Civil Procedure Code (Act XIV of 1882), ss. 336, 349—

SURETY—continued.

1. LIABILITY OF SURETY—concluded.

Release of judgment-debtor on finding a surety for his production at a specified time—Death of judgment-debtor before the expiration of that time—Release of surety—Execution of decree as against

2.—Insolvency—Civil Procedure Code (Act XIV of 1882), s. 336—Surety undertaking that judgment-debtor should apply to be declared an insolvent—Application in insolvency by judgment-debtor—Subsequent failure to appear—Release of surety.—E became surety for a judgment-debtor, undertaking to produce the judgment-debtor in Court when called upon, and that he should apply to be

3.—Production of judgment-debtor—Civil Procedure Code (Act XIV of 1882), s. 336.—Where a surety enters into a bond, under s. 336 of the Code

2. ENFORCEMENT OF SECURITY.

4.—Mode of enforcement—Liability, mode of enforcing—Civil Procedure Code (Act XIV of 1882), ss. 545-546.—The mode of enforcing payment by a surety who has rendered himself liable under

5.—Execution of decree—Security bond—Mortgage—Sale of mortgaged property—Civil Procedure Code (Act XIV of 1882), s. 545—Transfer of Property Act (IV of 1882),

SURETY—continued.**2. ENFORCEMENT OF SECURITY—concluded.**

given in security, without instituting a suit under s. 67 of the Transfer of Property Act. **SHYAM SUNDAR LAL & BAJPAI JAINARAYAN** (1903)

[I. L. R., 30 Calc., 1080 ;
s.c., 7 C. W. N., 914

3. DISCHARGE OF SURETY.

6.—Administration—Probate and Administration Act (V of 1881), ss 51 and 78—Surety bond, power of a District Court to take a second—Administratrix, mal-administration of the estate by—Contract Act (IX of 1872), s 130—Application by a surety, who is not a beneficiary, to be discharged from his suretyship.—Under the Probate and Administration Act (V of 1881), a District Court, after once having taken a bond with sureties, has jurisdiction to take a second bond with fresh sureties, if the necessity arises. A surety (who is not a beneficiary) for the administratrix of an estate can, so far as relates to the future, by giving notice, be released from his obligation as surety on account of mal-administration of the estate by the administratrix. S 130 of the Contract Act (IX of 1872) applies to such a case. **RAJ NARAIN MOOKERJEE v. FUL KUMARI DEBI (1901) . I. L. R., 29 Calc., 68 ;
[s.c., 8 C. W. N., 7**

7.—Insolvency—Civil Procedure Code (Act XIX of 1892), s. 336—Surety that judgment-debtor will apply to be declared insolvent—Due application by judgment-debtor.—Where a surety entered

8.—Limitation—Act IX of 1872 (Indian Contract Act), ss. 134 and 137—Creditor allowing

SURETY—concluded.**3. DISCHARGE OF SURETY—concluded.**

has not made default in payment of the debt—

[I. L. R., 24 All., 504

SURRENDER.

—of tenancy—

See **BENGAL TENANCY ACT, 1885, s. 86.**

[I. L. R., 25 Calc., 256

See **LANDLORD AND TENANT—ABANDONMENT, RELINQUISHMENT OR SURRENDER OF TENANCY.**

—of lease—

See **TRANSFER OF PROPERTY ACT, s. 118.**
[8 C. W. N., 905

SURVEY ACT.

See **BENGAL SURVEY ACT.**

SURVIVORSHIP.

See **HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP.**

SWINGING.

—by hooks—

See **RASH AND NEGLIGENT ACT.**
[6 C. W. N., 378

T**TAHSILDAR.**

See **SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY, OR OTHERWISE.**
[I. L. R., 24 Mad., 121

TALUKDAR.

See **GUJARAT TALUKDARS ACT (BOM. ACT VI of 1893).**

[I. L. R., 28 Bom., 757

See **OWN ESTATES ACT.**

TANK.

See **LAND ACQUISITION (I of 1894), s. 23.**
[I. L. R., 28 Calc., 152

TAX.

—legality of—

See **MADRAS DISTRICT MUNICIPALITIES ACT, s. 63 . I. L. R., 24 Mad., 185**

TAX—concluded.

—liability of Government to—

See MADRAS CITY MUNICIPAL ACT, s. 341.
[I. L. R., 25 Mad., 457]

—liability to—

See MADRAS DISTRICT MUNICIPALITIES ACT—

s. 53 AND SCH. A, PROviso 4;
[I. L. R., 24 Mad., 644]

s. 63 I. L. R., 25 Mad., 627

SCH. A. I. L. R., 25 Mad., 747

—suit for injunction to restrain levy of—

See BOMBAY DISTRICT MUNICIPAL ACT
(BOM. ACT III OF 1901), ss. 82 (c)
AND 86 I. L. R., 27 Bom., 403

—suit to recover, illegally levied—

See MADRAS DISTRICT MUNICIPALITIES
ACT, ss. 53 AND 263.

[I. L. R., 24 Mad., 205]

See MADRAS LOCAL BOARDS ACT, ss. 57,
64 AND 149.

[I. L. R., 24 Mad., 114]

—Municipality—Levy of house-tax—House
valuation—Fair selling value—Absence of mala
fides, perversity or manifest error—Civil
Courts—Jurisdiction—In the absence of proof of
mala fides, perversity or manifest error, Civil
Courts ought not to interfere with the house valuation
made by a Municipality for the purpose of
taxation, unless there is a breach of the rules
prescribed by law for making the valuation.
KASANDAS RAGHUNATHDAS v. ANKLESWAB
MUNICIPALITY (1901) I. L. R., 28 Bom., 294

TEHSILDAR.

See TEHSILDAR

TEMPLE.

—suits concerning—

See ACT—1863—XX.

See HINDU LAW—ENDOWMENT.

See MAHOMEDAN LAW—ENDOWMENT.

TENANCY.

See LANDLORD AND TENANT

—sub-division of—

See BENGAL TENANCY ACT, s. 88
[8 C. W. N., 823]

TENANCY IN COMMON.

See HINDU LAW—

INHERITANCE—JOINT PROPERTY
AND SURVIVORSHIP;

[I. L. R., 28 Bom., 445]

TENANCY IN COMMON—concluded

See HINDU LAW—concluded.

PARTITION—RIGHT TO PARTITION
—WIDOW.

[I. L. R., 24 Mad., 441]

See RIGHT OF SUIT—INJURY TO ENJOY-
MENT OF PROPERTY.

[I. L. R., 25 Bom., 248]

TENANT.

See JOINT TENANCY.

See LANDLORD AND TENANT.

—for life, apportionment of rent after death of—

See LANDLORD AND TENANT—PAYMENT
OF RENT—GENERALLY.

[I. L. R., 28 Mad., 540]

—improvement by—

See CO-SHAREE—SUITS BY CO-SHAREES
WITH RESPECT TO THE JOINT PRO-
PERTY I. L. R., 28 Calc., 223.

TENDER.

See CONTRACT ACT (IX OF 1872), s. 61.
[I. L. R., 30 Calc., 865]

See LEGAL TENDER.

—by money order—

See EXECUTION OF DECREE—MODE OF
EXECUTION—INSTALLMENTS.
[I. L. R., 24 All., 86]

—of patta—

See MADRAS RENT RECOVERY ACT—

ss. 3 AND 80;

[I. L. R., 28 Mad., 589]

s. 4; I. L. R., 28 Mad., 363.

s. 10; I. L. R., 25 Mad., 613.

s. 11. I. L. R., 28 Mad., 458

TENURE.

See MOHYARBI ISTENABDI TENURE.

—and raiyat holding; distinction be-
tween—

See BENGAL CESS ACT, s. 4.
[5 C. W. N., 535]

—incidents of—

See INTEREST—MISCELLANEOUS CASES—
APPEARS OF RENT.

[7 C. W. N., 203]

—interest on arrears of rent of—

See INTEREST—MISCELLANEOUS CASES—
APPEARS OF RENT.
[I. L. R., 29 Calc., 874]

TENURE—concluded.**—service—**

See GHATWALI TENURE.

See SERVICE TENURE.

—transfer of—

See BENGAL TENANCY ACT, SS. 65 AND 188.

[I. L. R., 29 Calc., 319]

—what constitutes—See BENGAL TENANCY ACT (VIII OF 1885),
s. 5 (5) . . . 6 C. W. N., 626**TEST CASE.**

See PRACTICE—CIVIL CASES—TEST CASE.

TESTATOR.See COSTS—SPECIAL CASES—ATTORNEY
AND CLIENT . . . 8 C. W. N., 306

See HINDU LAW—WILL.

See MAHOMEDAN LAW—WILL

See WILL.

THEFT.

See STOLEN PROPERTY.

1.—Corpses—Act XLF of 1860 (Indian
Penal Code), s. 378—Human body not capable

2.—Fish—Penal Code (Act XLF of 1860),
s. 379—Removal of a fish from an ordinary irrigation
tank—Charge of theft—Maintainability of
charge.—Fish in an ordinary irrigation tank are
not in the possession of any person, so as to be
capable of being the subject of theft. Nor does the
removal of such fish constitute any other offence.
Queen v. Rewa Pothadu, I. L. R., 5 Mad., 391a,
and *Bhogiram Dome v. Adar Dome*, I. L. R., 15
Calc., 388, referred to. *SUREA REDDI v. MUKSHOOR*
ARI SANKH (1900) . . . I. L. R., 24 Mad., 81

THEFT—concluded.

goods train, a van on the train, in which four railway
coolies were travelling, was searched. The property
missed was not found, but, hidden under a heap of
clothing belonging to the four coolies, were discovered
10 *thans* of cloth, which, on investigation, were
ascertained to have been abstracted from the next
van. Held that none of the four coolies travelling
in the van where the 10 *thans* of stolen cloth were
found could be convicted of the theft of the cloth, in
the absence of evidence to connect one or more of
them individually with the possession of the cloth.
KING-EMPEROR v. ALI HUSAIN (1901)

[I. L. R., 23 All., 306]

THUMB IMPRESSIONS.

—Assault to deter public servant from discharge of

It is necessary that a gesture or preparation should
be made by a person which would cause another to
apprehend that the person was about to use criminal
force to him then and there. A preparation taken
with words which would cause him to apprehend that
criminal force would be used to him, if he persisted
in a particular course of conduct, does not amount
to an assault. Where a *surveillant*, on a domiciliary
visit being paid to him by a police officer, refused to

KHALIFA v. EMPEROR (1902)

[I. L. R., 30 Calc., 87; a.c., 6 C. W. N., 342]

TITLE.

Col.

- | | |
|--------------------------------------|------|
| 1. EVIDENCE AND PROOF OF TITLE . . . | 1107 |
| 2. MISCELLANEOUS CASES . . . | 1109 |

See CLAIM TO ATTACHED PROPERTY.

See LANDLORD AND TENANT—NATURE OF
TENANCY . . . I. L. R., 28 Calc., 693See POSSESSION—SUITS FOR POSSESSION.
[5 C. W. N., 234
I. L. R., 28 Mad., 514]See RESISTANCE OR OBSTRUCTION TO
EXECUTION OF DECREE.See SALE IN EXECUTION OF DECREE—
PURCHASERS, TITLE OF.

TITLE—continued.

—abstract of, not corresponding with original—

See SALE IN EXECUTION OF DECREE—
SETTING ASIDE SALE—RIGHTS OF
PURCHASERS—RECOVERY OF PURCHASE-
MONEY . I. L. R., 30 Calc., 488

—decision of Revenue Court as to—

See RES JUDICATA—COMPETENT COURT—
REVENUE COURTS.

—declaration of; suit for—

See DECLARATORY DECREE, SUIT FOR.

—denial of—

See CO-SHARER—SUITS BY CO-SHARERS
WITH RESPECT TO THE JOINT PROPERTY.
[I. L. R., 28 Calc., 223

See LANDLORD AND TENANT—FORFEITURE
—DENIAL OF TITLE.

—inquiry into—

See BENGAL PRIVATE FISHERIES PROTEC-
TION ACT . . . 6 C. W. N., 113

—proof of—

See LANDLORD AND TENANT—NATURE OF
TENANCY . I. L. R., 28 Calc., 738

See ONUS OF PROOF—POSSESSION, AND
PROOF OF TITLE.

See POSSESSION—EVIDENCE OF POSSES-
SION.

—question of—

See REGISTRAR OF HIGH COURT—SALE
BY REGISTRAR . 5 C. W. N., 593

See RES JUDICATA—
ESTOPPEL BY JUDGMENT;
[6 C. W. N., 66

COMPETENT COURT—

SMALL CAUSE COURT CASES;
REVENUE COURTS

See SMALL CAUSE COURT, MOFUSSIL—
JURISDICTION—TITLE, QUESTION OF.

See SMALL CAUSE COURT PRESIDENCY
TOWNS—JURISDICTION—IMMOVABLE
PROPERTY.

See SPECIAL OR SECOND APPEAL—SMALL
CAUSE COURTS SUITS—TITLE, QUES-
TION OF.

1. EVIDENCE AND PROOF OF TITLE.

1.—Evidence Act, 1872, s. 32 (5) (6)—Title
as *recreational heirs*—Proof of pedigree—Admis-
sion of relationship—Actual *recreations* not
bound by acts of contingent *recreations*—Held
that the appellants had, in the absence of counter-
evidence, sufficiently proved their title, as *recre-*

TITLE—continued.**1. EVIDENCE AND PROOF OF TITLE—concl.**

sionary heirs to the estate of the deceased, by oral
evidence of reputed common descent, admissible
under Act I of 1872, s. 32, sub-s (5), and by
documentary evidence, that his widow had recognised
fifty years before suit, under conditions, that her
husband's heirs were entitled to succeed her, and
that she was not prepared to contest the claim of the
appellant's predecessor to be such heirs. Those
conditions were not binding on the appellants, who
claimed in their own right, and were not bound by
contracts made with them.

2. MISCELLANEOUS CASES.**2.—Suit for land—Specific Relief Act
(I of 1877), s. 9—Suit for land, based on title—**

defendants from certain land, claiming title to it
by
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title
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but

wise than by due course of law, by defendants,
within six months prior to the institution of the
suit. He considered that s. 9 of the Specific Relief
Act applied, and declared plaintiff entitled to
possession, but dismissed the suit in so far as it
claimed to have plaintiff's title established. Held
that, inasmuch as the suit had not been brought
under the special provisions of the Specific Relief
Act, but was based on plaintiff's superior title,
a claim to title being also set up in defence, the
issue concerning title should have been tried. The
suit ought not to have been treated partly as a suit
under s. 9 and partly as based on plaintiff's
title. *Ram Harak Rai v. Soodhial Joti*, I. L.
R., 15 All., 394, not followed. *RAMASAMI CHETTI*
v. *PARAMAN CHETTI* (1901)

[I. L. R., 25 Mad., 448

3.—Occupancy rights—Limitation Act (I
of 1877), s. 11, Art. 139—Claim for more
than twelve years by tenants from year to year of
permanent occupancy rights, to knowledge of
landlord—Determination of lease.—A person who
has lawfully come into possession of land as tenant
from year to year for a term of years, or as mort-
gagee, cannot, by setting up, during the continuance
of such relation, any title adverse to that of the
landlord or mortgagor, as the case may be, inconsis-
tent with the real legal relation between them,
and that however notoriously and to the knowledge
of the other party—acquire, by the operation of the

TITLE—concluded.**2. MISCELLANEOUS CASES—concluded.**

law of limitation, title as owner, or any other title inconsistent with that under which he was let into possession. In the case of a mortgage, the title of the mortgagor will be extinguished only at the expiration of the period prescribed for the redemption of the mortgage, and, in the case of a lease, the landlord's title can be extinguished only at the expiration of the period prescribed by Art. 139 of Sch II to the Limitation Act, and under that article such period will commence to run only when the tenancy is determined. *SESHAMMA SHETTYATI v CHICKAYA HEGADE* (1902). I. L. R., 25 Mad., 507

TITLE-DEEDS.**—possession of—**

See ARBITRATION—AWARDS—CONSTRUCTION AND EFFECT OF.

[I. L. R., 29 Cal., 793]

TOLLS.**—recovery of dues under lease of—**

See MADRAS DISTRICT MUNICIPALITIES ACT, s. 269. I. L. R., 26 Mad., 475

TORT.

See DAMAGES—SUITS FOR DAMAGES—TORT

See MINOR—CUSTODY OF MINORS.

[I. L. R., 25 Bom., 574]

TORT-FEASORS.

See CONTRIBUTION, SUIT FOR—JOINT WRONG-DOERS

TOUT.

See LEGAL PRACTITIONERS ACT, 1879, s. 36. 6 C. W. N., 289

[I. L. R., 26 Mad., 596]

TRADE-MARK.

1.—*Importer—Rights of importer of goods bearing manufacturer's or producer's trade-mark—Contract by importer for exclusive supply of goods—False statement in trade-mark—Deception—Evidence—Admissibility of judgment of Foreign Court—Evidence Act (I of 1872), s. 3—cl. 4, and s. 42—Parties—Joinder of parties—Civil Procedure Code (Act XIV of 1882), ss 27, 31, 32 and 34—Practice.*—The plaintiff, an importer and seller of watches, sued to restrain the defendants from importing into or selling in Bombay or other parts of India watches, similar in appearance to a certain class of watches imported and sold by the plaintiff, and having a trade-mark so similar to the trade-mark on the watches imported by

TRADE-MARK—continued.

plaintiff that it was calculated to deceive purchasers into the belief that such watches were watches imported and sold by the plaintiff. It was proved that the trade-mark on the watches imported by

watches under a contract for exclusive supply in India. *Held* that the plaintiff was not entitled to an injunction. *An application for an injunction.*

that in no case was the plaintiff entitled to relief,

consequently in all possible markets in which it might be introduced. *See* 27, 31 and 32 of the Civil Procedure Code (XIV of 1882) did not apply. *HEINIGER v. DROZ* (1900). I. L. R., 25 Bom., 433

2.—*Prior use in Scotland—Prior user by owner in Scotland—Effect on right to exclusive user in British India by a person other than the owner—Infringement.*—Plaintiff claimed to have been for many years the sole importer into Bombay and Madras of umbrellas bearing a certain trade-mark. Defendant had recently commenced importing and selling in Madras umbrellas which, plaintiff contended, bore a trade-mark so similar as to be calculated to deceive purchasers so as to induce them to buy defendant's umbrellas under the belief that they

TRADE-MARK—concluded.

were buying plaintiff's. He asked for an injunction and damages. Defendant denied that plaintiff had been the sole importer of umbrellas bearing the trade-mark in question; or that he was the owner or entitled to the exclusive use of that trade-mark; or that umbrellas bearing that trade-mark had come to be known as umbrellas imported and sold by plaintiff alone. It was contended that the trade-mark belonged to, and had, since 1884, been used by, a Glasgow firm, who manufactured the umbrellas, and supplied them to defendant, through another. Defendant denied the alleged similarity of the trade-mark, or that purchasers were calculated to be deceived as alleged, and contended that plaintiff could not lawfully use or claim it. For the purposes of the case it was assumed that the trade-mark in question had been used by the Glasgow firm before it was used by

[I. L. R., 24 Mad., 163

3.—Title of a book—*Trade description—Unauthorised publications—Indian Penal Code (Act XLV of 1860), ss 478, 482—Merchandise Marks Act (IV of 1889), ss. 4, 6*—The complainant, as a descendant of one Shri Chandu, had

publisher in Bombay, prepared a calendar and put the name "Shri Chandu Panchang" on the outside, although the calendar was not prepared by the descendants of Shri Chandu. The complainant thereupon filed an information against the defendant, under s 482 of the Indian Penal Code (Act XLV of 1860) and s. 3 of the Merchandise Marks Act (IV of 1889). *Held* (1) that the defendant had committed no offence under s. 482 of the Indian Penal Code (Act XLV of 1860), for the title "Shri Chandu Panchang" did not come within the definition of "trade mark" given in s. 478 of the Code; and (2) that the defendant's act did not fall under s. 3 of the Merchandise Marks Act (IV of 1889), as it was not alleged that the defendant's calendars differed as to text from the complainant's or were compiled on different principles; the allegation was simply that they were unauthorized. *RADHA KRISHNA JOSHI v. KISSORLAL SHRIDHAR* (1901)

[I. L. R., 26 Bom., 289

TRANSFER.

—by landlord—

See LANDLORD AND TENANT—TRANSFER BY LANDLORD.

—by tenant—

See LANDLORD AND TENANT—TRANSFER BY TENANT.

—of decree, for execution—

See CIVIL PROCEDURE CODE, s. 232.
[I. L. R., 29 Calc., 235

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION.

—of lease—

See FRYER . I. L. R., 26 Mad., 156

—of malikana rights—

See MALIKANA . 7 C. W. N., 846

—of occupancy right—

See POSSESSION—SUITS FOR POSSESSION.
[7 C. W. N., 607

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

TRANSFER OF CIVIL CASE.

| | |
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| 1. GENERAL CASES | Col. 1112 |
| 2. LETTERS PATENT, HIGH COURTS, 1895, CL. 13 | 1113 |

1. GENERAL CASES.

1.—Part-heard case—*Civil Procedure Code (Act XIV of 1882), ss. 25, 191 (2)*—Suit commenced in a District Court—Issues settled by District Judge—Case transferred to Sub-Court by High Court—Decision by Sub-Judge—Appeal to and decision of District Judge—Validity of decision in appeal and of transfer by High Court.—A suit was instituted in a District Court, and issues were settled by the District Judge. The suit was then

second appeal being preferred to the High Courts:

2.—Re-transfer—*Civil Procedure Code, s. 25*—*Transfer—Re-transfer by District Judge to his own file of a case once transferred by him to the file of the Subordinate Judge—Where a District*

TRANSFER OF CIVIL CASE—continued.**1 GENERAL CASES—concluded.**

Judge had once exercised the powers conferred by s. 25 of the Code of Civil Procedure, and transferred a case to his own file from the files of the Subordinate Judge.

Das (1902) . . . I. L. R., 24 All., 304

3. ——— Civil Procedure Code, ss. 25, 403 et seq.—Transfer—Application for leave to sue in forma pauperis filed in Court of Subordinate Judge—Application transferred by District Judge to his own file—District Judge not thereafter competent to send the suit back to the Subordinate Judge for trial—A pauper plaintiff presented to a Subordinate Judge an application for leave to sue as a pauper. This application was, by means of an order under s. 25 of the Code of Civil Procedure, transferred to the District Judge.

Judge, *Amir Begam v. Prahlad Das* (1902), I. L. R., 24 All., 804, referred to NANDAN PRASAD & KENNEY (1902) . . . I. L. R., 24 All., 356

4. ——— Act XII of 1897 (Bengal, N.W. P. and Assam Civil Courts Act), ss. 11 and 17—Civil Procedure Code, s. 25—Transfer—Jurisdiction—Construction of Statutes.—Held that the words "in the event of the death, resignation or removal of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held," occurring in s. 11, cl. (1), of Act XII of 1897, include the abolition by order of Government of a special Court temporarily constituted by Government to exercise jurisdiction in a particular district, and that therefore where such Court, being the Court of a Subordinate Judge, had ceased to exist, and the District Judge had taken upon his own file a suit which had been pending before the said Court, it was competent to the District Judge, under s. 11, cl. (3), of the Act above-mentioned, to re-transfer such suit to the Court of the permanent Subordinate Judge.

2. LETTERS PATENT, HIGH COURTS, 1965, CL. 13.**TRANSFER OF CIVIL CASE—concluded.****2. LETTERS PATENT, HIGH COURTS, 1965, CL. 13—concluded.**

Resident and to try and determine the same ABDUL KARIM FATHE MAHOMED v. MUNICIPAL OFFICER, ADEN (1903) . . . I. L. R., 27 Bom., 575

TRANSFER OF CRIMINAL CASE.

| | Col. |
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| 1. GENERAL CASES | 1114 |
| 2. LETTERS PATENT, HIGH COURTS, 1965, CL. 29 | 1116 |
| 3. GROUND FOR TRANSFER | 1117 |

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES . . . 5 C. W. N., 498

See CRIMINAL PROCEEDINGS, [5 C. W. N., 252]

See DISCHARGE OF ACCUSED, [7 C. W. N., 527]

See MAGISTRATE—GENERAL JURISDICTION; [I. L. R., 30 Calo., 449]

POWERS OF MAGISTRATES, [I. L. R., 28 Mad., 130]

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS, [5 C. W. N., 688]

—Letters Patent, High Courts, cl. 29—

See TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER [I. L. R., 28 Calo., 703]

—Right of accused to—

See SECURITY FOR GOOD BEHAVIOUR, [I. L. R., 29 Calo., 392]

—when proceedings taken in absence of accused—

See ACCUSED PERSON, [5 C. W. N., 110]

1. GENERAL CASES.

1.—Adjournment—Application for adjournment of trial before hearing—Duty of Court to grant reasonable adjournment—Refusal to adjourn trial; effect of, on subsequent proceedings—Code of Criminal Procedure (Act V of 1893), s. 526, cl. (8).—The law does not require that an application for postponement under sub-s. (3) of s. 526 of the Code

TRANSFER OF CRIMINAL CASE— continued.

1. GENERAL CASES—continued.

COMMENCEMENT OF THE HEARING, HIS INTENTION TO MAKE an application for the transfer of the case. If such an intention is notified, however short a time before the commencement of the hearing, the Court before which its powers of reference to have had of time. The postponement that follow *Gayatri Pr. Cal.*, 455; (1898), *I. L. R.*, 19 *Mad.*, 675, distinguished. **SUBAT LALL CHOWDHRY v. EMPEROR** (1902) [*I. L. R.*, 29 *Calc.*, 211; *sc.*, 6 *C. W. N.*, 251]

2.—*Criminal Procedure Code* (Act V of 1909) ss 244 FOR

to enable the petitioner under s. 526 to make his application before the accused is called on for his defence. Where, upon an application made by an accused for adjournment under sub-s. (8) of s. 526, the Magistrate did not make any special order of adjournment for the sole purpose of enabling him

of so doing and the time he was called on for defence. S. 526, sub-s. (8), requires only that a reasonable time shall be allowed for the defence.

as to the point at which the accused would be called on for his defence. **DHOSE KRISTO SAMANTA v. KING-EMPEROR** (1902) . . . 8 *C. W. N.*, 717

3.—“Criminal case.”—The provisions of s. 526 of the Criminal Procedure Code.

criminal case means a case arising out of, and dealing with, some crime already committed. It does not

TRANSFER OF CRIMINAL CASE— continued.

1. GENERAL CASES—concluded.

include proceedings taken for the prevention of crime. **IN RE PANDURANG GOVIND PUJARI** (1900) [*I. L. R.*, 25 *Bom.*, 179]

4.—*Jurisdiction—Criminal Procedure Code* (Act V of 1898), s. 528—*Power of District or Sub-Divisional Magistrate to transfer a criminal case from the file of a Village Magistrate—Extent of power—Petty thefts triable under Mad. Reg. IV of 1891.*—The jurisdiction which a District or Sub-Divisional Magistrate has, under s. 528 of the Code of Criminal Procedure, to transfer a criminal case

ANAYAN (1902) . . . *I. L. R.*, 26 *Mad.*, 394

5.—*Notice—Criminal Procedure Code* (Act V of 1898), s. 528—*Transfer of case at request of Magistrate.*—An order for the transfer of a case, made at the request of the Magistrate on whose file the case stands, and not on the application of a party, is an exception to the general rule that an order for transfer should not be made under s. 528 of the Code of Criminal Procedure without notice to the other side. **QUEEN-EMPEROR v. KUPPUMUTHU PILLAI** (1900)

[*I. L. R.*, 24 *Mad.*, 317]

6.—*Criminal Procedure Code*, s. 528—*Transfer, application for—Notice to*

I. L. R., 8 *Calc.*, 393, referred to. **ASODHYA LAL v. PARYAG NARAIN** (1902) . . . 7 *C. W. N.*, 114

7.—*Security for keeping the peace—Criminal Procedure Code*, ss 107 (2), 192—*Power of District Magistrate to transfer proceedings instituted by him against a person not within his district.*—Held that it was competent to a District Magistrate, who had initiated proceedings under s. 107 (2) of the Code of Criminal Procedure against a person not at the time within the limits of his jurisdiction, to transfer such proceedings at a later stage to a Magistrate subordinate to himself, although such Magistrate was not competent to initiate such proceedings. **KING-EMPEROR v. MUNYA** (1901)

[*I. L. R.*, 24 *All.*, 151]

2. LETTERS PATENT, HIGH COURTS, 1865. CL. 29

8.—*Criminal Procedure Code* (Act V of 1898), ss 145, 526—*Jurisdiction of High Court to transfer a case pending disposal under s. 145.*—A case under a 145 of the Code of Criminal

TRANSFER OF CRIMINAL CASE— continued.

1. GENERAL CASES—continued.

Court before which the case is pending, before the commencement of the hearing, his intention to make an application for the transfer of the case. If such an intention is notified, at however short a time before the commencement of the hearing, the Court before which the case is pending is bound to exercise its powers of postponement or adjournment without reference to any opportunity that the party might have had of making an application at some earlier time. The refusal to grant such an application for postponement is illegal, and none of the proceedings that follow can be supported. *Queen-Empress v. Gayilri Prosunno Ghosal* (1899), *I. L. R.*, 15 *Calc.*, 455, followed *Queen-Empress v. Virasami* (1896), *I. L. R.*, 19 *Mad.*, 875, distinguished. *SUBAT LALL CHOWDHRY v. EMPEROR* (1902)

[*I. L. R.*, 29 *Calc.*, 211;
8 *C. W. N.*, 251]

2. ———— *Criminal Procedure Code*
(Act V of 1898) ss. 528, 529

adjournment for the sole purpose of enabling him

ponement being made and an order being obtained thereon before the accused is called on for his defence. It is therefore competent to the Magistrate, before granting an adjournment, to proceed with the case up to the point at which the accused would be called on for his defence. *DHONU KRISTO SAMANTA v. KING-EMPEROR* (1902) 8 *C. W. N.*, 717

TRANSFER OF CRIMINAL CASE— continued.

1. GENERAL CASES—concluded.

include proceedings taken for the prevention of crime. *IN RE PANDURANG GOVIND PUJARI* (1900)

[*I. L. R.*, 25 *Bom.*, 179]

4. ———— *Jurisdiction—Criminal Procedure Code* (Act V of 1898), s. 528—Power of District or Sub-Divisional Magistrate to transfer a criminal case from the file of a Village Magistrate—Extent of power—Petty thefts triable under *Mad. Reg. IV of 1821*.—The jurisdiction which a District or Sub-Divisional Magistrate has, under s. 528 of the Code of Criminal Procedure, to transfer a criminal case

5. ———— *Notice—Criminal Procedure Code* (Act V of 1898), s. 528—Transfer of case at request of Magistrate.—An order for the transfer of a case,

[*I. L. R.*, 24 *Mad.*, 317]

6. ———— *Criminal Procedure Code*, s. 528—Transfer, application for—Notice to

party, notice should be given to the other party, before an order of transfer is made. *Teacottah Shekdar v. Ameer Majes and others* (1882), *I. L. R.*, 8 *Calc.*, 393, referred to. *AJODHYA LAL v. PABTAJ NARAIN* (1902) 7 *C. W. N.*, 114

7. ———— *Security for keeping the peace—Criminal Procedure Code*, ss. 107 (2), 192—Power of District Magistrate to transfer proceedings instituted by him against a person not within his district—Held that it was competent to a District Magistrate, who had initiated proceedings under s. 107 (2) of the Code of Criminal Procedure against a person not at the time within the limits of his jurisdiction, to transfer such proceedings at a later stage to a Magistrate subordinate to himself, although such Magistrate was not competent to initiate such proceedings. *KING-EMPEROR v. MUNNA* (1901)

[*I. L. R.*, 24 *All.*, 151]

2. LETTERS PATENT, HIGH COURTS, 1865.
CL. 29.

8. ———— *Criminal Procedure Code* (Act V of 1898), ss. 145, 526—Jurisdiction of High Court to transfer a case pending disposal under s. 145.—A case under s. 145 of the Code of Criminal

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

—s. 53—continued.

or delay creditors—13 *Elix, Cop. 5, and 27 Elix, Cop. 4*—Bhagwant filed a suit against Ganpati, the manager of a Hindu undivided family, to recover a sum of money due to him, and on the same day obtained an order for attachment before judgment of certain property belonging to the defendant and his family. Before the attachment was actually effected, the property in question and other property was sold to Kedari (defendant No 1). The deed of conveyance was executed on the day the suit was filed, and the order for attachment was made and notice of the order for attachment was

reached before he attachment the plaintiff and then filed this suit against the vendor and purchaser, praying for a declaration that the conveyance was fraudulent and void, and that the property was liable to attachment in execution of his decree. The lower Courts dismissed the suit, holding that the sale to

object of the : Held : of the Transfer of Property Act (IV of 1882) did not apply, as it was not found that the transfer in question was made fraudulently or for a grossly inadequate consideration. *Held, also*, that, although the object of the transfer was to defeat an anticipated execution, that did not show that the intent was to defeat or delay the creditors so as to render cl. 1 of s. 53 applicable. Such intent would probably be inferred if there was such an inadequacy of

2. —Suits by one creditor to set

ISHWAR TIMAPPA HEODE v. DEVAR VENKAPPA SHANBOO (1902) . I. L. R., 27 Bom., 148

3. —Transfer to one creditor—

Good faith.—One Byramji Kuverji died in June, 1896, indebted to several creditors. Immediately after his death his sons mortgaged his property to Moti Gelaji, one of his creditors. On the 11th August, 1897, another creditor, Jaitha Kupaji, obtained letters of administration to the estate of the deceased, and, as such administrator, sold the property to the son of the mortgagee, the latter having died. Subsequently the plaintiffs

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

—s. 53—concluded.

appeared that in this case it was intended that the grantees should have the property and keep it. NATHA KUPAJI v. MAGANCHAND MOTIJI (1903) [I. L. R., 27 Bom., 322]

—s. 54—

See MORTGAGE—REDEMPTION—RIGHT TO REDEM. I. L. R., 24 Mad., 449

—s. 55 (4)—

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF. [I. L. R., 30 I. A., 238]

—s. 57—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS [I. L. R., 24 Mad., 412]

—s. 58—

See MORTGAGE—

FORM OF MORTGAGES :

[I. L. R., 27 Bom., 600
" 26 Bom., 33
" 25 Mad., 220]

CONSTRUCTION.

[I. L. R., 26 Mad., 682
" 26 Bom., 252
" I. R., 29 I. A., 148]

—s. 59—

See DEED—

EXECUTION :

[5 C. W. N., 454]

ATTESTATION

[I. L. R., 27 Bom., 91
7 C. W. N., 160, 384]

See REGISTRATION ACT (III of 1877). s. 28 . I. L. R., 23 Calc., 654

See SIGNATURE.

[I. L. R., 24 All., 319]

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

—s. 60—

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . 5 C. W. N., 83
[I. L. R., 24 Mad., 409, 449]

See RES JUDICATA—ESTOPPEL BY JUDGMENT . I. L. R., 24 All., 44

—s. 65—

—Cl. (a)—Duty of mortgagor to pay public revenue on mortgaged land—Default in payment—Sale for arrears of revenue—Subsequent sale by purchaser at revenue sale to original mortgagor—Right of mortgagee under original mortgage.—It is the duty of a mortgagor, under s. 65 (c) of the Transfer of Property Act, to pay the public revenue accruing due on the mortgaged property, when it continues in his possession. If he fails to perform that duty, and the land is sold for arrears of revenue, and the purchaser at the revenue sale sells the land to the original mortgagor, the mortgage is not extinguished. A man cannot be allowed to take advantage of his own wrong; and, notwithstanding that the land might have vested in the purchaser at the revenue sale free of the mortgage, the original mortgagor (of his son), on his purchase from the auction-purchaser, cannot plead, for his own benefit, that he was not a party to the mortgage.

allowed. SANAGAPALLY LAKSHMAYYA v. INTOORY BOLLA REDDY (1902)

[I. L. R., 28 Mad., 385]

—s. 67—

See post, s. 69

[I. L. R., 30 Calc., 463]

See MORTGAGE—

POWER OF SALE;

[I. L. R., 26 Bom., 241]

REDEMPTION—RIGHT OF REDEMPTION.

[I. L. R., 23 All., 1]

See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT VII OF 1880), ss. 2, ETC.

[I. L. R., 29 Calc., 537]

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.

[I. L. R., 24 All., 549]

See SURETY—ENFORCEMENT OF SECURITY . I. L. R., 30 Calc., 1080

—s. 68—

See MORTGAGE—POWER OF SALE.

[I. L. R., 26 Bom., 241]

—s. 70—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

[I. L. R., 29 Calc., 803]

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

—s. 72—

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

[I. L. R., 30 Calc., 794]

—s. 73—

See LIMITATION ACT, 1877, SCH. II, ART 132 . 5 C. W. N., 356

—s. 74—

See MORTGAGE—

SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES;

[I. L. R., 24 All., 185]

FORECLOSURE—RIGHT TO FORECLOSURE.

[I. L. R., 24 All., 179]

—Mortgage of property—Subsequent mortgage to same mortgagee—Third mortgage, with possession—Decree obtained by first mortgagee—Usufructuary mortgages not a party—Subsequent suit for possession of the mortgaged property and mortgagee's claim for interest—At a still later date, the mortgagor gave a further usufructuary mortgage to the mortgagee in title of

24 Mad., 71, at pp. 174, 175, followed. GOVINDHANA DOSS v. VEERABAMI CHETTI (1902)

[I. L. R., 28 Mad., 537]

—s. 75—

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.

[I. L. R., 23 All., 1]

—s. 80—

See MORTGAGE—REDEMPTION—MISCELLANEOUS . I. L. R., 23 All., 429

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

—s. 81—

See REGISTRATION.

[I. L. R., 28 Bom., 538]

—s. 82—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

[I. L. R., 29 Calc., 803]

See SALE IN EXECUTION OF DECREE—JOINT PROPERTY

[I. L. R., 23 All., 355]

1.—Contribution—Liability of several properties to rateable contribution "in the absence of

Act, and claimed rateable contribution from the other portions of the mortgaged property which had not been sold to satisfy the mortgagee's decree *Held* that he was entitled to recover, and that his right to rateable contribution was in no way affected by the indemnity bond or the payment made to him thereunder. *Held, further*, that the words "in the absence of a contract to the contrary," in s. 82 of the Transfer of Property Act, apply to contracts between a mortgagor and mortgagee, and that an agreement which is binding only as between the mortgagors is not "a contract to the contrary," within the meaning of the section **RAMABHADRACHAR v. SRINIVASA AYYANGAR** (1900)

[I. L. R., 24 Mad., 85]

2.—Contribution to mortgage debt—Liability of land in possession of third person—Certain land was mortgaged to B. Subsequently a portion of the land comprised in B's

R's security. This remaining land was purchased by some of the defendants. Plaintiffs now sued on

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

—s. 82—continued.

their mortgage, and claimed not only as against their mortgagors, and the property comprised in

in their character of second mortgagees stood in a fiduciary position towards their mortgagors, and that they were not entitled to be treated as independent was :
adva
took
taker

was objected that the suit was not maintainable by reason of s. 43 of the Code of Civil Procedure. *Held* that this objection was not sustainable, and that, regarding the case as one of a mere personal claim on the instrument of mortgage, s. 43 did not apply. **SESHA AYYAR v. KRISHNA AYYANGAR** (1900) . . . I. L. R., 24 Mad., 96

3.—Contribution, suit for—Mortgage debt—Mortgage-decree directing sale of some of the mortgaged properties first—Purchase of properties by different parties—Payment of

the incidence of the debt may be done in this case, primarily on some of the

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

—s. 83—concluded.

and the other properties are only liable if the debt is not realized by the sale of those properties. Whatever might have been the right of the purchaser of some of the properties if such a mortgage-deed had not been passed, he cannot, when he has purchased the same, be bound to the same.

Gopi Kishore Mandul (1902)

[6 C. W. N., 583]

—s. 83—

See MORTGAGE—REDEMPTION—

RIGHT OF REDEMPTION;

[I. L. R., 26 Bom., 312]

MISCELLANEOUS CASES.

[I. L. R., 27 Bom., 33]

1.—*See* 83, 84—*Mortgage—Re-payment of money lent—Lender not bound to accept payment by instalments, unless he has so agreed—* Where no stipulation or covenant has been made between the contracting parties as to the repayment of a sum borrowed, the lender is entitled to decline to receive payment of a sum due to him in instalments, and he can claim that the whole sum due be paid at once and the same time. *BENARI LAL v. RAM GHULAM* (1902). I. L. R., 24 All., 481

2.—*Redemption of mortgage—Deposit in Court by the mortgagor of the sum alleged by him to be due on the mortgage—Conditions of such deposit.—A mortgagor paid into Court, under the provisions of s. 83 of the Transfer of Property Act, the sum which in his estimation was sufficient to redeem his mortgage. The mort-*

to the High Court, but, pending their appeal, were allowed by the Court in which it was deposited to withdraw the money paid in by the plaintiff under s. 83. Held that the defendants had, after such withdrawal of the money deposited by the plaintiff, no right to proceed with their appeal. The money deposited by the mortgagor plaintiff

discharge of their mortgage, and deposited the mortgage deed (if in their possession or power) in Court. *DAL SINGH v. PITAM SINGH* (1902)

[I. L. R., 25 All., 179]

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

—s. 84—

See MORTGAGE—REDEMPTION—

RIGHT OF REDEMPTION;

[I. L. R., 26 Bom., 312]

MISCELLANEOUS CASES

[I. L. R., 27 Bom., 23]

—s. 85—

See HINDU LAW—ALIENATION—ALIENATION BY FATHER

[I. L. R., 28 Calc., 517
24 All., 211]

See MORTGAGE—

SALE OF MORTGAGED PROPERTY—

RIGHTS OF MORTGAGORS;

[I. L. R., 30 Calc., 589]

PURCHASERS;

[I. L. R., 23 All., 467]

REDEMPTION—RIGHT OF REDEMPTION.

[5 C. W. N., 83
I. L. R., 23 All., 25]

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.

See SALE IN EXECUTION OF DECREE—

JOINT PROPERTY;

[I. L. R., 25 All., 214]

MORTGAGED PROPERTY.

[I. L. R., 24 All., 549]

—s. 86—

See LIMITATION ACT, 1877, SCH. II, ARTS. 178 AND 179.

[I. L. R., 24 All., 543]

—s. 87—

See LIMITATION ACT, 1877, SCH. II, ARTS. 178 AND 179.

[I. L. R., 24 All., 542]

See MORTGAGE—

REDEMPTION—RIGHT OF REDEMPTION . I. L. R., 25 All., 231

FORECLOSURE—

RIGHT OF FORECLOSURE;

[8 C. W. N., 654]

DEMAND AND NOTICE OF FORECLOSURE.

[I. L. R., 29 Calc., 644]

—s. 88—

See DECREE—CONSTRUCTION OF DECREE—MORTGAGE. . 5 C. W. N., 137

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION, AND POWERS OF COURT . I. L. R., 25 All., 541

See INTEREST—MISCELLANEOUS CASES—MORTGAGE . . 6 C. W. N., 769

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

—s. 88—concluded.

See LIMITATION ACT, 1877, SCH. II, ART. 179—STEP IN AID OF EXECUTION—SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER.

[I. L. R., 24 Mad., 695

See LIS PENDENS.

[I. L. R., 23 All., 331

—ss. 88, 89—

—Application for order for decree absolute—Appeal—Civil Procedure Code (Act XIV of 1892).

Ajudhia Pershad v. Baldeo Singh, I. L. R., 21 Calc., 818, and *Tara Prasad Roy v. Bhobodeb Roy*, I. L. R., 29 Calc., 931, discussed *MALLIKARJUNADU SETHI v. LINGANURTI PANTULU* (Feb., 1902) . . . I. L. R., 25 Mad., 244

—ss. 88, 89, 90—

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

—s. 89—

See post, s. 90 AND s. 90.

See CIVIL PROCEDURE CODE, s. 108.

[I. L. R., 25 All., 49

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION, AND POWERS OF COURT.

[I. L. R., 25 Mad., 537

See INTEREST—MISCELLANEOUS CASES—MORTGAGE . . . 6 C. W. N., 769

See LIMITATION ACT, 1877, SCH. II, ART. 179—STEP IN AID OF EXECUTION—SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER.

[I. L. R., 24 Mad., 695

See LIS PENDENS.

[I. L. R., 23 All., 331

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY:

[I. L. R., 25 Mad., 508

SETTING ASIDE SALE—GENERAL CASES . I. L. R., 25 Bom., 104

—Mortgage—Order absolute for sale of mortgaged property, application for—Decree—Execu.

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued

—s. 89—concluded.

as an appeal from an original decree *Tiluck Singh v. Parsotein Proshad* (1895), I. L. R., 22 Calc., 925, and *Tara Prasad Roy v. Bhobodeb Roy* (1895), I. L. R., 23 Calc., 931, relied upon The decision of the majority of the Full Bench in

into the plea of payment of the mortgage-debt. *PRANATHA CHANDRA ROY v. KHETRA MOHAN GHOSH* (1902) . . . I. L. R., 29 Calc., 651

—s. 90—

See ante, ss. 88, 89, 90

See COSTS—SPECIAL CASES—MORTGAGE. [I. L. R., 23 All., 439

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION, AND POWERS OF COURT . . . I. L. R., 25 All., 541

—Mortgage-decree—Order under s. 90 not necessary.

original decree is a personal one against the mort-

1 C. W. N., 744

—s. 90 and s. 89—

—Execution of decree—Mortgage—Decree for sale of part only of the mortgaged property—Property sold insufficient to satisfy the mortgage-debt—Application for decree made under s. 90—

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

—s. 80 and s. 88—concluded.

proved insufficient to satisfy the mortgage-debt, the decree-holder applied for a decree over, under s. 90 of the Transfer of Property Act, against the unhy-pothecated property of the mortgagor. *Held* that, the

—s. 91—

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION. I. L. R., 25 All., 446
5 C. W. N., 83

—cl. (2)—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.
[I. L. R., 23 All., 467]

—s. 92—

See RES JUDICATA—
ESTOPPEL BY JUDGMENT;
[I. L. R., 24 All., 44]
ADJUDICATIONS.
[I. L. R., 25 Mad., 300]

—ss. 92, 93—

See MORTGAGE—REDEMPTION—
RIGHT OF REDEMPTION;
REDEMPTION OTHERWISE THAN ON
EXPIRY OF TERM—REDEMPTION
AFTER EXPIRY OF TERM
[I. L. R., 26 Bom., 121]

—s. 93—

See RES JUDICATA—ESTOPPEL BY JUDGMENT. I. L. R., 24 All., 44.

—ss. 92, 93—Mortgage—Redemption—Applica-tion for enlargement of time—Application to be made to the Court of first instance, not to the Appellate Court.—Where a decree for redemption under s. 92 of the Transfer of Property Act, 1882, has been made by an Appellate Court, an application under the last paragraph of s. 93 must be made, not to that Court, but to the Court of first instance. *Venkata Krishna Ayyar v. Thiagaraya Chetti* (1899), I. L. R., 23 Mad., 521, followed. *Oudh Behari Lal v. Nageshar Lal* (1890), I. L. R., 13 All., 278, referred to. *Shreevarais v. Chenni Lal* (1900). I. L. R., 23 All., 88

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

—s. 94—

See MORTGAGE—POWER OF SALE.
[I. L. R., 25 Mad., 108]

—ss. 96, 97—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.
[I. L. R., 30 Calc., 953]

—s. 98—

See MORTGAGE—
FORM OF MORTGAGES;
[I. L. R., 27 Bom., 600]
CONSTRUCTION.
[I. L. R., 26 Bom., 252]

—s. 99—

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.
[I. L. R., 26 Bom., 88]

See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT VII of 1880), ss. 2, 27C.
[I. L. R., 29 Calc., 537]

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.
[I. L. R., 25 Bom., 161]

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY.
[I. L. R., 24 All., 549]

See SURETY—ENFORCEMENT OF SECURITY.
[I. L. R., 30 Calc., 1060]

—Mortgage—Sale of mortgaged property—Money-decree—Transfer of Property Act (IV of 1882), at 67, 99—Execution—Purchase by the mortgagee, effect of—Mortgagee, liabilities of—Account—A mortgagee, in execution of a decree obtained against the mortgagor on account of another debt, sold the mortgaged properties, purchased the equity of redemption himself, and obtained possession through the Court. And, in a subsequent suit upon the mortgage for sale of the mortgaged properties, the defence, *inter alia*, was that the proceedings were contrary to the provisions of s. 99 of the Transfer of Property Act; that the purchase by the plaintiff was null and void; and that the mortgagee was bound to account for the period he was in that. Transferee mortgage obtained by him was not in accordance with law, and he was therefore liable to render account of moneys realized from the mortgaged properties during the term of his possession. *Durgayya v. Anantha* (1890), I. L. R., 12 Mad., 74, followed. *Sri Raja Papanna Rao v. Sri Vira Pratapa Ramachandra Rao* (1896), I. L. R., 19 Mad., 249, referred to. *Shri DASS DASS v. KALI KUMAR ROY* (1903)

[I. L. R., 30 Calc., 463;
s.c., 7 C. W. N., 532]

TRANSFER OF PROPERTY ACT (IV
OF 1882)—continued.

—g. 100—

—Mortgage—Suit by sons against father for partition—Subsequent mortgage of suit property by father—Consent-decree in partition suit—Subsequent decree in a suit on the mortgage against the father alone—Liability of property in execution—Effect of instrument intended to be a mortgage but defective in form—Charge—Plaintiffs, who were the sons of first defendant, had, on 18th March, 1893, instituted a suit against their father for partition. On 24th July, 1893, their father executed a deed purporting to mortgage the house to defendants Nos. 2 and 3. That deed was, however, attested by only one witness. On 24th December, 1894, a raziinama was filed, and a decree based on it was passed in the partition suit between plaintiffs and their father, by which the father conveyed to plaintiffs the whole of his interest in the immovable family property, retaining only sufficient money to satisfy certain incumbrances which he had on the mortgage. These were in fact

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See MORTGAGE—

**SALE OF MORTGAGED PROPERTY—
RIGHTS OF MORTGAGEE;
[L. L. R., 28 Bom., 38]**

EXEMPTION—RIGHT OF REDEMPTION . . . I. L. R., 23 ALL. 1

See SALE FOR ARREARS OF RENT—INCUMBRANCES . . . 6 C. W. N., 834

—B. 103—

See MORTGAGE—REDEMPTION—MISCELLANEOUS CASES . L. L. R., 27 BOM., 23

**TRANSFER OF PROPERTY ACT (IV
OF 1882)—continued.**

—d. 105—

See EVIDENCE--PAROL EVIDENCE--VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . . . L. R. 39 I. A. 138

—a 107—

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . L. R., 29 I. A. 138

See REGISTRATION ACT, S. 17, CL. (d)
[L. L. R., 24 Mod., 421]

---s. 108, cl. (c)---

See LANDLORD AND TENANT—OBLIGATION
OF LANDLORD TO GIVE AND MAINTAIN
TENANT IN POSSESSION.
[L. L. R., 25 Horn., 289]

~~cl. (a)~~

See SALE IN EXECUTION OF DECREE—
SETTING ASIDE SAME—GENERAL CASES.
16 C. W. N., 339

_____cls, (b), (c)~

See LANDLORD AND TENANT—PROPERTY
IN TREES AND WOOD ON LAND.
[L. L. R. 34 Md., 47]

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See LANDLORD AND TENANT—NATURE
OF TENANCY.
[I. L. R., 26 Mad., 488]

-----ol. (d)-----

See PATENT TENDERS.
[L. L. R., 25 Calo., 744]

$$\text{---} \text{Cl}^{\bullet}(\sigma) \text{---}$$

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS.
R. L. R., 28 Med., 187

—110—

See LANDLORD AND TENANT—HOLDING
OVER AFTER TENANCY.
[L. L. R. 37 Bom. 262]

—116 117—

See LANDLORD AND TENANT—HOLDING
OVER AFTER TENANCY.
[L. L. R. 28 Cal. 227]

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See LANDLORD AND TENANT—PROPERTY
IN TREES AND WOOD ON LAND.
[L. L. R. 34 Mad., 47]

-118-

1.—*Exchange or partition—Transfer, without writing or registration*.—Where plaintiff and defendants Nos. 4 to 6 were joint owners of certain property, and plaintiff alone was owner of other property, and by an oral arrangement plaintiff got the former property in its entirety: *Held* that

TRANSFER OF PROPERTY ACT (IV OF 1882)—concluded.

—s. 118—concluded.

the and cred. R. 724

2.—Landlord and Tenant—Transfer of Property Act (IV of 1882), ss. 118, 119—Exchange.—Where a tenant voluntarily surrendered certain leasehold rights, and took from the landlord leasehold rights of some other property: Held that the transaction was not an exchange. *WALIUL HASSAN v. GOPAL SARUN NARAIN SINGH*. (1902). 8 C. W. N., 905

—s. 119—

See ante, s. 118. 8 C. W. N., 905

—s. 123—

See HINDU LAW—GIFT—REQUISITES FOR GIFT. I. L. R., 25 All., 358

See MAHOMEDAN LAW—GIFT. [I. L. R., 24 Mad., 513]

—s. 135—

See N.-W PROVINCES RENT ACT (XII OF 1861), ss. 42, 43 AND 205.

[I. L. R., 24 All., 517]

TREES.

See INJUNCTION—SPECIAL CASES—CUTTING TREES.

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND.

See PARTITION—MISCELLANEOUS CASES [I. L. R., 23 All., 291]

See POSSESSION—EVIDENCE OF POSSESSION. I. L. R., 24 All., 294

—removal of, suit for—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—N.-W. PROVINCES. I. L. R., 23 All., 488

TRESPASS.

See CRIMINAL TRESPASS.

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.

[I. L. R., 25 Bom., 248]

—by cattle—

See CATTLE TRESPASS ACT.

TRESPASSER.

See MESNE PROFITS—

RIGHT TO, AND LIABILITY FOR; [I. L. R., 24 All., 376]

TRESPASSER—concluded.

See MESNE PROFITS—concluded.

MODE OF ASSESSMENT AND CALCULATION. I. L. R., 23 All., 252

TRIBUTARY MAHALS OF ORISSA.

—Jurisdiction—Mohurbhunj—Execution—Decree of Court in British India—Transmission of decree for execution by Court at Mohurbhunj—Civil Procedure Code (Act XIV of 1882), ss. 229A, 229B.—There being no notification to that effect in the Gazette under ss. 229A and 229B, Civil Procedure Code, a Civil Court in British India has no jurisdiction to order its decree to be sent for execution by the Court at Mohurbhunj. *Sur v. Parake* which Mohurbhunj British India.

KSATOO SAHOO v. RATAN MAHANTI (1902) [8 C. W. N., 573; a.c., I. L. R., 29 Calc., 400]

TRUST.

See LIMITATION ACT, 1877, s. 10.

See MAHOMEDAN LAW—ENDOWMENT.

See RIGHT OF SUIT—CHARITIES AND TRUSTS.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—TRUSTS.

See WILL—CONSTRUCTION—CHARITABLE GIFT. 8 C. W. N., 321

—breach of—

See EXECUTOR. [I. L. R., 28 Bom., 301]

—for benefit of creditors—

See INSOLVENT ACT (11 AND 12 VICT., c. 21)—

s. 9; [I. L. R., 26 Bom., 478 ss. 9 AND 21.]

[I. L. R., 26 Bom., 765]

1.—Nature of suit—Suit for land—Property—Executors—Trust—Limitation Act (XV of 1877) s. 10—Where property was by will vested in

Cosmarea Dossee v. Tarini Churn Byjack (1882).

TRUST—continued.

I. L. R., 8 Calc., 766, referred to. *NISTARINI DASSI*
v. *NUNDO LAL BOSE* (1902)

[*I. L. R.*, 30 Calc., 369

2.—Secret trust—Evidence—A party setting up a secret trust must adduce evidence to prove that it was communicated by the testator to the universal legatee, and that the legatee agreed to accept the property bequeathed on the terms of the trust. *Jones v. Badley* (1869), *L. R.*, 3 Ch. A. C., 362, referred to. *KALI CHARAN GHOSAL* v. *RAJ CHANDRA MANDAL* (1903) . *I. L. R.*, 30 Calc., 783

3.—Trust not completed—Trust deed—Trust not completed—No possession of trust property taken by trustees—Deed never acted upon—Gift

trustees a large amount of property in trust (ultimately) for the sons of Soonderdas Mulji in equal shares when the youngest of such sons should attain twenty-one years of age or the survivor of the wives of Soonderdas Mulji should die, whichever should last happen. At the date of his death, Soonderdas Mulji had only one son, who was then eight years old, but on the 6th *Magsir Sud* 1931 (14th December, 1874) a second son (the plaintiff) was born, and he attained his majority on 6th *Magsir Sud*

30th October, 1888, whereby, after giving certain

the will of his father Soonderdas, and he be-

TRUST—concluded.

queathed the whole of such properties to his son, the defendant Karsandas. The plaintiff thereupon filed this suit, contending that the trust-deed was inoperative, and that he was entitled to a moiety of the estate, and that Dharamsi's will was of no effect. Held that the trust-deed was inoperative and of no effect—(a) inasmuch as, under its provisions, the

GORDHANDAS SOONDERDAS v. *BAI RAMCOOVER*
(1901) . . . *I. L. R.*, 26 Bom., 449

TRUST PROPERTY.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—TRUST PROPERTY.

TRUSTEE.

See TRUST.

—alienation by—

See LIMITATION ACT, 1877, SCH. II—
ART 134;

[*I. L. R.*, 26 Bom., 363, 500

ARTS. 134 AND 141.

[*I. L. R.*, 27 Bom., 373

—assignment of trusteeship—

See ACT—1863—XX, s. 18.

[*I. L. R.*, ■ Mad., 219

—nature of liability of—

See RECEIVER . *I. L. R.*, 30 Calc., 937

—of temple—

See ACT—1863—XX.

—suit against—

See LIMITATION ACT, 1877, s. 10.

[7 C. W. N., 353

TRUSTS ACT (II OF 1882).

See EXECUTOR

[*I. L. R.*, 26 Bom., 301

TRUSTS ACT (II OF 1882)—concluded.

— s. 91—

See VENDOR AND PURCHASER—INVALID
SALES . . I. L. R., 28 Bom., 159

U**UNCHASTITY.**

See DEFAMATION—IMPUTATION ON A
WIFE . . I. L. R., 25 Bom., 151

See HINDU LAW—

INHERITANCE—DIVESTING OF, EX-
CLUSION FROM, AND FORFEITURE
OF, INHERITANCE—UNCHASTITY;

MAINTENANCE—WIDOW;
[I. L. R., 27 Bom., 485

PARTITION—RIGHT TO PARTITION—
WIDOW; I. L. R., 24 Mad., 441
STRIDHAN—EFFECT OF UNCHASTITY.

See SLANDER I. L. R., 28 Calc., 452

UNCONSCIONABLE BARGAIN.

See INTEREST—MISCELLANEOUS CASES—
BOND . . I. L. R., 25 All., 284

See WILL—CONSTRUCTION
[5 C. W. N., 729

UNDER-RAIYAT.

See LANDLORD AND TENANT—EJECTMENT
—NOTICE TO QUIT.

[I. L. R., 29 Calc., 231

UNDUE INFLUENCE.

See CONTRACT—ALTERATION OF CON-
TRACTS—ALTERATION BY THE COURT
(INQUITABLE CONTRACTS).

[I. L. R., 25 Bom., 128

See ONUS OF PROOF—PRINCIPAL AND
AGENT . . I. L. R., 25 All., 358

See FARDANASHIN WOMEN.
[5 C. W. N., 505

UNLAWFUL ASSEMBLY.

See ABSCONDING OFFENDER.
[I. L. R., 29 Calc., 417

See PENAL CODE, s. 186.
[I. L. R., 30 Calc., 285

See PRIVATE DEFENCE, RIGHT OF
[I. L. R., 26 Mad., 249

See RIOTING.

1.—Penal Code, s. 141—Penal Code (Act
XLV of 1860), s. 379, 141, 147—Theft—Rioting

UNLAWFUL ASSEMBLY—continued.

rt, while dis-
an unlawful
nmon object
called upon
to plead nor tried, and to affirm the conviction,
RAHIMUDDIN v. ASGARALI (1900) 5 C. W. N., 31

son to join or become a member of a particular

offence. S. 167 of the Penal Code is of wider appli-
cation. It provides for an occurrence that may
happen, and makes the harbouring, receiving or
assembling of persons who are likely to be engaged

s. c., 11 C. W. N., 143

3 — Indian Penal Code (Act
XLV of 1860), s. 141, 146—Rioting - Common
object—Lawful assembly becoming unlawful—A
lawful assembly may turn unlawful all on a sudden,
and without previous concert among its members
Among the members of a religious procession, those
who may be actually found resorting to force and
violence with the common object of overawing a
police officer in the lawful discharge of his duties
would constitute themselves an unlawful assembly.
RAGHO SINGH v. KING-EMPEROR (1902)
[6 C. W. N., 507

4.—Penal Code, s. 143—Possession of land,
question of—Onus of proof—Prosecution, duty of,
to prove facts—Presumption—Where some persons
were accused and charged with having come upon
a piece of land with a large number of people and
committed mischief in respect of some indigo crops

UNLAWFUL ASSEMBLY—continued.

said to have been raised upon it by the complainant's tenants, and the accused pleaded that they held the land from some time before, and in proof put in a road-cess return, filed by the complainant, showing that the accused were, at the date when the return was filed, in possession of a larger plot of land of which they claimed the land in dispute to be a part. Held that the presumption as to the possession of the disputed land was in favour of the accused, and that it was for the prosecution to prove that the accused gave up possession of the land of which they had held previous possession, or that they had held some other lands in the same village which were mentioned in the road-cess return, before any conviction could be had of the accused. **BIKU KOZE v. MARSEMAN (1901)** . . . 5 C. W. N., 388

5. Defence by accused persons
accused in their possession. Paddy holm...

of the paddy, with his servants, whereupon all the accused resisted him, and maintained the possession of the first accused, some blows being struck. On a charge being preferred against the accused for rioting: Held that no offence had been committed. **KING-EMPEROR v. ATTA ANNASAMY AITAR (1901)**

[I. L. R., 25 Mad., 624]

6.—Penal Code, s. 144—Penal Code, s. 114, 144—Possession of deadly weapon, if necessary to render each member of unlawful assembly liable for offence under s. 144.—When one person instigates another to join an unlawful assembly armed with a deadly weapon, and afterwards joins the unlawful assembly himself, he may be punishable under s. 144, Indian Penal Code, read with s. 114, even though he was not himself armed with a deadly weapon. **SEIKARI SHOME v. LAL KHAN (1900)**

[5 C. W. N., 250]

7. Evidence of common object.—Two persons were charged with being members of an unlawful assembly armed with deadly weapons for the purpose of committing dacoity.

UNLAWFUL ASSEMBLY—concluded.

8.—Penal Code, s. 148—Indian Penal Code (Act XLV of 1860), ss. 148, 149, 324—Rioting, armed with deadly weapon—Offence committed in prosecution of common object.—The principal accused, who was unarmed, appeared with a large

by one of them, with a dao picked up in the hut. The person who inflicted the wound was not placed on his trial. Of the others who were placed on their trial, the petitioners were convicted by the Joint Magistrate under s. 148 and s. 324, read with s. 149, of the Indian Penal Code. Held that the conviction under s. 148, Indian Penal Code, was wrong, as each person charged under that section must himself be shown to have been armed. **Sabir v. Queen-Empress (1894), I. L. R., 22 Calc., 276**, followed. Held, further, that the wound inflicted on Wahed Ali could not be regarded as the natural result of the common enterprise in which the accused were engaged, so that the conviction under s. 324, read with s. 149, was also wrong. **HABENDRA CHANDRA SARKAR v. EMPEROR (1903)** . . . 7 C. W. N., 612

UNPROFESSIONAL CONDUCT.

See CONTEMPT OF COURT—PENAL CODE, s. 174 . . . 7 C. W. N., 787

See MOOTHEAR

See PLEADER—REMOVAL, SUSPENSION AND DISMISSAL.

UNSOUNDNESS OF MIND.

See INANITY.

See LUNATIC

USAGE.

See CUSTOM

See LOCAL USAGE

USER.

See EASEMENT

[I. L. R., 30 Calc., 1077]

See PRESCRIPTION

See RIGHT OF WAY.

USUFRUCTUARY MORTGAGE.

See MORTGAGE—

CONSTRUCTION—

BOND AND RENTAL AGREEMENT.

[I. L. R., 26 Mad., 662]

USUFRUCTUARY MORTGAGE;

POSSESSION UNDER MORTGAGE;

REDEMPTION—RIGHT OF REDEMPTION . . . 6 C. W. N., 601

accused under s. 144 of the Indian Penal Code

USURY.

See HINDU LAW—USURY.

See INTEREST—STIPULATIONS AMOUNTING OR NOT TO PENALTIES.

V**WAKALATNAMA.**

See LIMITATION ACT, 1877, SCH. II, ART. 179—NATURE OF APPLICATION—GENERALLY.

[I. L. R., 26 Mad., 197

See PLEADER—APPOINTMENT AND APPEARANCE.

WAKIL.

See CONTEMPT OF COURT—PENAL CODE, § 174 . . . 7 C. W. N., 797

See PLEADER.

—appearance of, on Original Side of Calcutta High Court—

See PRACTICE—CIVIL CASES—WAKIL AND COUNSEL . I. L. R., 30 Calc., '986

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, § 622

[7 C. W. N., 843

—compromise by, of suit—

See COUNSEL . . . C. W. N., 82

—in Kumaon or Garhwal, enrolment of—

See LEGAL PRACTITIONERS ACT, §§. 6 AND 8 . I. L. R., 24 All., 349

VALUATION OF APPEAL.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL

See VALUATION OF SUIT—APPEALS.

VALUATION OF SUIT.

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| 1. SUITS | 1144 |
| 2. APPEALS | 1145 |

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL.

See APPELLATE COURT—

GENERAL DUTY OF APPELLATE COURT;

[I. L. R., 25 All., 174

INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT.

[I. L. R., 30 Calc., 501, 518

VALUATION OF SUIT—continued.

See COURT-FEES ACT—

§. 7, CL. IV (d);

[I. L. R., 24 Mad., 34

SCH. I, ART. 11.

[I. L. R., 24 Mad., 241

See PLAINT—REJECTION OF PLAINT.

[I. L. R., 23 All., 423

1. SUITS.

1.—“Land”—Pre-emption—Wajib-ul-arz—Court-fee—Act VII of 1870 (Court-fees Act), §. 7, sub-s. F (b)—Land—Valuation of suit.—The term “land”, as used in the Court-fees Act, 1870, does not include buildings. A claim, therefore, for pre-emption of an indigo factory, although the site of the factory may be land paying revenue to the Government, must be valued, and court-fees paid thereon according to the value of the buildings constituting the factory, and not according to the value of the site. Such buildings as constitute an indigo factory would fall within the meaning of the term “houses”, as used in the Court-fees Act. DURGASINGH v. BHISHNAR DAYAL (1898)

[I. L. R., 24 All., 218

2.—Membership of tarwad—Valuation of a suit for declaration as to membership of tarwad.—The value of a suit for a declaration that certain persons are or are not members of a tarwad is the value of the share of the tarwad property which would be allotted to them if a partition were made by common consent. PANGA v. UNIKETI (1900)

I. L. R., 24 Mad., 275

3.—Partition—Act XII of 1887 (Bengal Civil Courts Act), §. 21—Act I of 1887 (General Clauses Act), §. 8, cl. (19)—Valuation of suit—Appeal—Suit for partition.—In a suit for partition of the share of one only out of several co-sharers in immovable property, the proper valuation of the suit for purposes of jurisdiction is the value of the share sought to be separated from the rest of the property, and not the value of the entire property out of which the share is to be taken. WAJIR-UD-DIN v. WALIULLAH (1902)

[I. L. R., 24 All., 381

4.—Revision of valuation—Court-fees Act (VII of 1870)—Suit for an account—Petition to increase valuation after finding by Commissioner—Increase to amount exceeding Court's jurisdiction—Return of plaint for presentation to proper Court—Material irregularity.—In a suit for an account, the usual valuation for purposes of Court fees was made in the plaint, which was filed and received in a Munsif's Court. The Munsif appointed a Commissioner to take an account, and the result was that plaintiff was found by the Commissioner to be entitled to much larger sum.

the Munsif ordered the plaint to be returned for

VALUATION OF SUIT—continued.

1. SUITS—concluded.

presentation to the proper Court. *Held* that the Munsif had acted with material irregularity in permitting the valuation of the suit to be revised; and that he ought to have tried the case. *AROGYA UDATAN v. APPACHI ROWTHAN* (1901)

[I. L. R., 25 Mad., 543]

5.—Under-valuation—*Suits Valuation Act (VII of 1887), s. 11—Under-valuation of suit—Disposal of suit not prejudicially affected—Admissibility of objection on second appeal.*—The defendant in a suit raised the objection that its valuation was incorrect, and that, if correctly valued, it would exceed the jurisdiction of the Munsif's Court. The objection was overruled, both in the Munsif's Court and in that of the District Judge, but was raised again on second appeal. *Held* that the objection was one that could be raised on second appeal. *Held, also*, that, even though the suit were under-valued, as contended, the objection to it on that ground was not one that the Court would entertain, having regard to s. 11 of the Suits Valuation Act (VII of 1887), inasmuch as it had not been

[I. L. R., 25 All., 277]

2. APPEALS.

6.—Improper valuation—*Suits Valuation Act (VII of 1887), s. 11—Improper valuation for jurisdictional purposes—Case not finally disposed of by lower Appellate Court, but only remanded for findings—Validity of order of remand.*

[I. L. R., 21 Mad., 427]

7.—Increase of valuation—*Jurisdiction—Bengal, N.W. P. and Assam Civil Courts Act (XII of 1887), s. 21—Plaintiff sued for an account, and valued the suit at Rs. 2,000, but added that if any further sum were found due he would pay the additional court-fee. A preliminary decree was*

at Rs. 500 did not lie Rs. 2,000 and lay to the District Judge, as the value of the suit must be considered as that stated in the plaint (Rs. 2,000).

VALUATION OF SUIT—concluded.

2 APPEALS—concluded.

NOGENDRA NATH MOZUMDAR v. RUSSIK CHANDRA RAI (1901) . . . 8 C. W. N., 348

8.—Partition—*Act XII of 1887 (Bengal, N.W. P. and Assam Civil Courts Act), s. 21—Act XIX of 1873 (N.W. P. Land-revenue Act), ss. 113, 114—Partition—Determination by*

the Court of Revenue has determined a question of title, and that "the value of the original suit," if not the value of the partitioned property, is the value of the suit.

[I. L. R., 25 All., 277]

VALUE OF PROPERTY.

—as stated in sale proclamation; gross inadequacy of—

See APPEAL—EXECUTION OF DECREES—QUESTIONS IN EXECUTION

[I. L. R., 30 Cal., 617]

—inquiry as to—

See COURT-FEES ACT (VII of 1870), s. 19H . . . 8 C. W. N., 888

VARIANCE BETWEEN PLEADING AND PROOF.

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|----------------------------|------|
| | Col. |
| 1. GENERAL CASES | 1146 |
| 2. SPECIAL CASE | 1147 |

1 GENERAL CASES

1.—Failure to establish case set up—*Practice—Pleadings—Failure of plaintiff to establish case set up by him—Right to succeed upon facts found differing from those alleged.*—The plaintiff sued the defendant, alleging that the defendant was tenant of a certain house belonging to the plaintiff.

that he had been in adverse possession for more than twelve years. The plaintiff failed to prove the allegation of tenancy set up by him, and it was not shown that the plaintiff had been in possession within a period of twelve years from the institution of the suit. *Held* that under the circumstances

VENDOR AND PURCHASER—continued.**1. BREACH OF COVENANT—concluded.**

house, we would remove the obstruction so as to put you to no trouble." In the year 1892 the plaintiff brought a suit to recover possession of the house.

deprived of the one-third share of the house. *Held* that the claim for damages was a claim to recover money upon an existing consideration that had failed, and that it fell under Art. 97, Sch. II, of the Limitation Act (XV of 1877), and not Art. 63, and was therefore time-barred, not having been brought within three years from the failure of consideration. The clause in the sale-deed was not a contract of indemnity. It was at most a covenant for title and quiet enjoyment. The failure of consideration took place when the plaintiff endeavoured to obtain possession of the property and, being opposed, found himself unable to obtain it. *Basu Kuar v. Dham Singh* (1888), *I L R.*, 11 All., 47, distinguished. *Tulstam v. Muralidhar Chaturbhux Marwadi* (1902), *I L R.*, 26 Bom., 750

2.—Covenant to pay arrears of rent—Default—Sale of part of the property, effect of—Damages— Plaintiff purchased certain *gotes* from defendants

to comply with the stipulation in the *adabata*. *AUFAR ALI SHAH FAKIR v. AZIBULLA MONDUL* (1903) [*J C. W. N.*, 805]

2 INVALID SALES.

3.—Notice of prior agreement to sell to another—Agreement to sell to A—Subsequent sale of same land to B under registered conveyance—Notice of prior agreement—Priority—Trust Act (II of 1882), s. 91—Specific Relief Act (I of 1877), s. 27.—On 25th June, 1895, the first defend-

VENDOR AND PURCHASER—continued.**2. INVALID SALES—concluded.**

dant entered into an agreement to sell certain land to the plaintiff, and, six months later (19th December, 1895), he sold the same land to the second defendant and conveyed it to him by a registered

to take possession, but was resisted by the second defendant. He thereupon filed this suit. It was found that the second defendant bought in December, 1895, with notice of the earlier agreement with the plaintiff of June, 1895. *Held* that the plaintiff was entitled to possession. The second defendant

as follows:—There should be a declaration that the second defendant holds the property for the benefit of the plaintiff as to the extent mentioned in

thikam; and a decree for possession. *GIYUR VALAD ISRAHIM FAKI v. BHIKAJI GOVIND* (1901) [*I L R.*, 26 Bom., 159]

4.—Purchaser with knowledge of liability to partition—Purchase by a co-sharer of part of joint property from his co-parceners—Subsequent partition of whole property—Part of property sold allotted to third person—Suit by purchaser—Covenant for title—Damages.—The plaintiff and the defendant (with other persons) were co-sharers in certain land. In 1890 the plaintiff purchased a part of this land from the defendant by

1896, in execution of the partition decree, the plaintiff was deprived of the part allotted to the third co-sharer. In 1899 the plaintiff filed this suit,

appeal, the District Judge reversed that decree and awarded the plaintiff the defendant's share of the land, together with Rs 61 as damages. *Held* that the plaintiff was not entitled to damages. There

not be removed by the seller (defendant), as was well known to the buyer (plaintiff). *SRIVRAM GOVIND DESAI v. BAL DASI DESAI* (1902)

[*I L R.*, 26 Bom., 519]

VENDOR AND PURCHASER—continued.

3. VENDOR, RIGHTS AND LIABILITIES OF.

5.—Unpaid purchase-money—Lien for unpaid purchase-money.—Where the consideration for a sale was the immediate payment of a portion of the purchase-money and an undertaking by the purchaser as to the residue, and a part payment was made and an undertaking given in the form agreed upon: Held that the property passed, at law and in equity, to the purchaser, when the con-

lates, there is no lien *In re Brentwood Brick and Coal Co. (1876), L. R., 4 Ch. Div., 562; Jersey v. Briton Ferry Floating Dock Co. (1869), L. R., 7 Eq., 409, at p. 413; Winter v. Lord Anson (1827), 3 Russ., 488; (1823), 1 S. & S., 434; In re Albert Life Assurance Company (1870), L. R., 11 Eq., 164; Dixon v. Gayfere (1857), 1 De G. & J., 655; Parnell v. Southland (1891), 9 W. & K., 655, 499, referred*

6.—Transfer of Property Act, s. 55, sub-s. (d).—Vendor's statutory charge in respect of unpaid purchase-money—Effect of contract to defer payment—Certificate of appeal—Act XIX of 1882, ss. 595 (c) and 600.—Under s. 55, sub-s. (d), of the Transfer of Property Act, a vendor has a statutory charge upon the whole of property sold, in the hands both of the purchaser and of those claiming under him, for the whole of the unpaid

clear
Thus
the
It
is not excluded by a mere personal contract to defer payment of a portion of the purchase-money, or to take the purchase-money by instalments, or by any
with the
regard to
certificate

4. MISCELLANEOUS CASES.

7.—Sale of zamindari share and appurtenances—Indigo factory not appertaining to.—On the sale of a share in zamindari property, buildings, such as indigo factories, will not ordinarily pass to the vendee along with the zamindari share sold, unless there is distinct evidence of the user of such

VENDOR AND PURCHASER—concluded.

4. MISCELLANEOUS CASES—concluded.

Debi Parashad (1874), 7 N.-W. P. H. C. Rep., 38; referred to. Durga Sinoh v. Bisheshwar Dayal (1898), I. L. R., 24 All., 218

8.—Stipulation as to payment of interest

Held that the stipulation as to the payment of interest is not conclusive to shew that the transaction is not an absolute sale but a mortgage. *Bhagwan Sahai v. Bhagwan Din (1890), I. L. R., 12 All., 357; Ali Ahmad v. Rahamtullah (1882), I. L. R., 14 All., 195; and Bai Motichau v. Mannu Bai (1897), I. L. R., 21 Bom., 709, distinguished. Mohan Sudan Das v. Rindoo Moni Baistabi (1901), 8 C. W. N., 192*

VERDICT OF JURY.

| | Col. |
|---|------|
| 1. GENERAL CASES | 1159 |
| 2. POWER TO INTERFERE WITH VERDICTS | 1163 |

See JOINDER OF CHARGES

[5 C. W. N., 866

See REFERENCE TO HIGH COURT—CRIMINAL CASES . . . 7 C. W. N., 345

See REVISION—CRIMINAL CASES—VERDICT OF JURY, AND MISDIRECTION.

—verdict of acquittal—

See REFERENCE TO HIGH COURT—CRIMINAL CASES . . . 7 C. W. N., 135

1. GENERAL CASES.

1.—Ambiguous verdict—Criminal Process—*See (1899), 20 Q.B. 307, 1900*

11 C. W. N., 200
2.—Evidence not taken—Verdict of jury given without taking evidence, if legal.—A verdict given on mere local inspection, and without taking evidence, by a jury appointed under s. 138, Criminal Procedure Code, is illegal. *Kailash Chander Sen v. Ram Lal Mitta (1899), I. L. R., 26*

VERDICT OF JURY—continued.**1. GENERAL CASES—concluded.**

Calc., 559, followed. **ADHORE CHANDRA DEY v. AMBIKA CHURN BOY** (1902) 8 C. W. N., 888

2. POWER TO INTERFERE WITH VERDICTS

3.—Appeal on facts—Criminal Procedure Code (Act V of 1899), ss. 419, 536—Trial by jury for offence triable by jury—Verdict of acquittal—Opinion of jury of guilt in respect of offence not triable by jury—Conviction—Two persons were charged, as first and second accused, before a Court of Session, with robbery (under s. 392 of the Indian Penal Code), and first accused was also charged with having caused grievous hurt in the course of the robbery (under s. 397). Both offences are triable, jury, who, b. accused of t referred to, fairly causing grievous hurt—an offence which is triable, not by a jury, but by assessors. The Sessions Judge acquitted both accused in respect of the

the aid of the jurors as assessors. The jury having found first accused guilty of causing grievous hurt, and the Judge having given judgment convicting

4.—Duty of High Court—Verdict of jury. disagreement with, by Judge—Reference to High Court—Procedure by High Court—Evidence, consideration of—Code of Criminal Procedure (Act V of 1899), ss. 307 and 451—Penal Code (Act XLV of 1860), ss. 147, 149, 325, 343—Assam Labour and Emigration Act (VI of 1901), s. 210.—S. 307 of the Code of Criminal Procedure requires

VERDICT OF JURY—concluded.**2. POWER TO INTERFERE WITH VERDICTS—concluded.**

that a High Court, in dealing with a case referred under it, shall consider the entire evidence on the case, and, next, after giving due weight to the opinions of the Sessions Judge and the jury, shall deliver judgment. The High Court in such a case is not bound to accept the opinion of the jury if it is not shown to be perverse or clearly or manifestly

is erroneous; and, secondly, that the error or errors was caused either by the Judge's misdirection as to the law as to that their part Judge. Ea (1903)

VERIFICATION.**—of plaint—**

See PLAINT—VERIFICATION AND SIGNATURE

VESTED INTERESTS.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—VESTED AND CONTINGENT INTERESTS.

See WILL—CONSTRUCTION.

VESTING ORDER.

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

See INSOLVENT ACT (11 & 12 VICT. c. 21) . . . I. L. R., 28 Calc., 419

VILLAGE SHAUKIDARS ACT (BENGAL ACT VI of 1870).**—s. 51—**

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE . . . 7 C. W. N., 142

VILLAGE MAGISTRATE.

See COMPENSATION—CRIMINAL CASES—TO ACCUSED, ON DISMISSAL OF COMPLAINT . . . I. L. R., 25 Mad., 667

See CONFESSION—CONFESSIONS TO MAGISTRATE . . . I. L. R., 26 Mad., 38

VILLAGE MAGISTRATE—concluded.

See TRANSFER OF CRIMINAL CASE—
GENERAL CASES.
[I. L. R., 28 Mad., 394]

VILLAGE OFFICERS.

See MADRAS HEREDITARY VILLAGE
OFFICERS ACT.

VIZAGAPATAM.

See GANJAM AND VIZAGAPATAM AGENCY
COURTS ACT (XXIV OF 1833).

VOLUNTARY PAYMENT.

See CONTRIBUTION, SUIT FOR—VOLUN-
TARY PAYMENT

See PAYMENT INTO COURT.

See SALE FOR ARREARS OF REVENUE—
DEPOSIT TO STAY SALE.

VOTING.

See COMPANY—MEETINGS AND VOTING.
[I. L. R., 27 Bom., 113]

W**WAGERING CONTRACT.**

See CONTRACT—WAGERING CONTRACTS.
See CONTRACT ACT, §§ 20, 30 AND 65.
[I. L. R., 25 Mad., 561]

WAIVER.

See ACQUESCENCE.

See BENGAL MUNICIPAL ACT (III OF
1884), §§ 238 AND 273

[5 C. W. N., 42]

See EVIDENCE—PAROL EVIDENCE—EX-
PLAINING WRITTEN INSTRUMENTS
AND INTENTION OF PARTIES.

[6 C. W. N., 242]

See LIMITATION ACT, 1877, SCH II,
ART 179—ORDER FOR PAYMENT AT
SPECIFIED DATES

—by accused—

See JURISDICTION OF CRIMINAL COURT
—EUROPEAN BRITISH SUBJECT
[I. L. R., 25 All., 511]

—of fresh proclamation of sale—

See SALE IN EXECUTION OF DECREE—
SETTING ASIDE SALE—IRREGULARITY.
[I. L. R., 24 Mad., 311
6 C. W. N., 42, 48]

WAIVER—concluded.

—of objection—

See APPELLATE COURT—OBJECTIONS
TAKEN FOR FIRST TIME ON APPEAL.

WAJIB-UL-URZ.

See PRE-EMPTION—

RIGHT OF PRE-EMPTION;
[I. L. R., 25 All., 80, 421]
CONSTRUCTION OF WAJIB-UL-URZ.

—testamentary bequest contained in—

See HINDU LAW—WILL—CONSTRUCTION
OF WILLS—ADOPTION.
[I. L. R., 24 All., 195]

WAQF.

See MAHOMEDAN LAW—ENDOWMENT

WARRANT.

—seal warrant—

See LIMITATION ACT, 1877, SCH. II,
ART. 179—STEP IN AID OF EXECU-
TION. I. L. R., 28 Calc., 580

—search-warrant—

See SEARCH-WARRANT.

WARRANT-CASE.

See DISCHARGE OF ACCUSED
[I. L. R., 28 Calc., 652]

WARRANT OF ARREST.

Col.

| | | |
|-------------------|-------|--------|
| 1. CIVIL CASES. | . . . | . 1156 |
| 2. CRIMINAL CASES | . . . | . 1158 |

See POSSESSION, ORDER OF CRIMINAL
COURT AS TO—DECISION OF MAGIS-
TRATE AS TO POSSESSION.
[5 C. W. N., 71]

1 CIVIL CASES.

1.—Jurisdiction of High Court—Indian
High Courts Act, 1861 (24 & 25 Vict., cap. 104),
s. 11—Letters Patent, 1865, cl. 11—Letters
Patent, 1900, cls 13 and 21—Jurisdiction of
High Court to issue warrant against judgment-
debtor and appoint special bailiff for its execution
—A Judge, in the exercise of the ordinary original
civil jurisdiction of the High Court at Madras,
directed a warrant to issue against the person of a
judgment-debtor, and appointed a special bailiff to
execute the warrant of arrest against the judgment-
debtor, wherever he might be found in the Presidency

WARRANT OF ARREST—continued.**1. CIVIL CASES—continued**

of Madras. *Held* that the order was made without jurisdiction. *Sogore Dutt v. Ramchunder Mitter*, 1 Hyd., 136, referred to *Monomothu Nath Dey v. Greendee Chundu Ghose and others*, 21 W. R., 366, referred to. *Jamuna Dhai v. Sadagopa*, 1 L. R., 7 Mad., 56, referred to. *RAJAN or RAMNAD v. SEETHARAM CHETTY* (1903)

[1 L. R., 28 Mad., 120

2.—Showing warrant—*Penal Code (Act XLV of 1860)*, s. 853, 225B—*Assaulting a public officer in execution of his duties—Resisting or obstructing public officer in discharge of his duties as such—Warrant, execution of, by person not authorized—Warrant of arrest, issue of, in execution of a Civil Court decree—Notification of contents of warrant, if necessary—Lawful arrest.*

the person with the contents of the warrant at the time he arrests him, and with the fact that he was authorized to arrest him, and if the accused then wants to see the warrant it would be the duty of the bailiff to show it to him. When a warrant is not shown to the person arrested, and the contents of the warrant are not notified to him, before or at the time of the arrest, there is no lawful arrest. *IN THE MATTER OF RAJANI KANTO PAL v. EMPEROR* (1901)

[5 C. W. N., 843

3.—Signature of warrant—Indian Penal

any other warrant issued in execution of a decree,

cedure Code, as the provision for variation in s. 644, Civil Procedure Code, shows, cannot be taken as implying a direction that a warrant for arrest, in

Penal Code. From the mere fact that the warrant for arrest of a judgment-debtor bore the signature of the *sharistadar*, it cannot be presumed, under a 114, cl. (c), Indian Evidence Act, that the *sharistadar* had been duly appointed to sign warrants. Evidence of the fact of appointment is necessary. *Per HARRINGTON, J.*—S. 114, cl. (c), Indian Evidence Act, authorises the presumption that a particular judicial or official act which has been performed has been performed regularly, but it does

WARRANT OF ARREST—concluded.**1. CIVIL CASES—concluded.**

not authorize the presumption, without any evidence, that the act has been performed. *DEPUTY LEGAL REMEMBRANCE v. MRS SARWAR JAN* (1902)

[8 C. W. N., 845

2. CRIMINAL CASES.

law. When an endorsement is made only by initials, which are proved or identified to be of the proper person, the warrant does not become invalid by reason merely of the endorsement being by initials. *ABDUL SIKDAR v. MATRU SINGH* (1901)

[5 C. W. N., 447

5.—Wrong description of accused—Onus of

Code of such accused person, who resisted or used criminal force upon his being arrested under such warrant, is illegal. In order to have a conviction for an illegal disobedience of a warrant, the onus is on the prosecution to show that the accused is the person against whom the warrant has issued. It is not for the accused to show that he is not the person against whom the warrant was issued. *DEBI SINGH v. QUEEN-EMPEROR* (1901)

[1 L. R., 28 Calc., 398;

s.c., 5 C. W. N., 413

WARRANT OF ATTACHMENT.

—Warrant issued by Civil Court—*Resistance to execution of—Legality of warrant—Rioting—Legal common object—Penal Code (Act XLV of 1860)*, s. 131, 147 and 325—*Civil Procedure Code (Act XIV of 1852)*, Sch. IV, Form No. 136.—Where resistance was made to the execution of a

NAME OF THE JUDGMENT-DEBTOR. *Held* that the warrant was not one which could lawfully be executed against

WARRANT OF ATTACHMENT—
concluded.

offence under s. 325 of the Penal Code was lawful. *Held*, also, that s. 141, cl. (2), of the Penal Code does not have the effect of making an assemblage of persons an offence which
UMA

WARRANT OF EXECUTION.

—*Warrant, validity of—Attachment of property in execution of an invalid warrant—Resistance or obstruction to such execution—Re-issue of warrant after expired date, legality of—Penal Code (Act XLV of 1860), ss. 183, 186.—A warrant for realization of money due under a certificate from a Revenue officer.*

by the Jazir and made returnable on the following day. In execution of this warrant certain cattle belonging to the judgment-debtor were attached, and these were taken away by the debtor's men, who pushed one of the police. The debtor's men were thereupon prosecuted for and convicted of offences under ss. 183 and 186 of the Penal Code. *Held* that, after the return of the 3rd March was made, the warrant ceased to be a valid warrant, and it could not be re-issued in that form. Also that, the warrant being illegal, no offence relating to the execution of such warrant was committed by the persons resisting such execution. ADHAR MIDDAT v. EMPRESS (1900) 5 C. W. N., 391

WARRANTY, BREACH OF.

See INSURANCE—LIFE INSURANCE.

[I. L. R., 25 Mad., 183

—*Sample—Jute—Examination—Proof of inferiority of quality—Opportunity of examining the bulk—Mode of examining sample—There may be cases in which the Court would be justified in drawing an inference as to the quality of the bulk from the quality of the sample, e.g., in a case in which the plaintiff had no opportunity of examining and testing the bulk; but the Court would not condemn the bulk as of inferior quality on proof of the inferiority of a sample, if the plaintiff had the opportunity of examining the bulk but adduces no evidence to prove its quality. In examining a certain number of bales of goods taken as a sample, the entire quantity in each bale, and not merely a portion, should be examined. It is not proper to examine a portion merely of each such bale and to assume that the residue would be of quality similar*

WASTE.

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW—SETTLING ASIDE ALIENATIONS, AND WASTE.

WASTE LANDS.

See LANDLORD AND TENANT—NATURE OF TENANCY.

[I. L. R., 28 Cal., 693

WATER.

See RIGHT TO USE OF WATER

WAY.

See RIGHT OF WAY.

WHIPPING.

1.—Added to imprisonment—Whipping Act (Act V of 1898), ss. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

imprisonment is not legal in the case of a conviction of dacoity which was committed prior to the previous conviction of a similar offence *Reg. v. Surja* (1866), 3 B. H. C. R., Cr. C., 88; and *Reg. v. Kusa* (1870), 7 B. H. C. R., Cr. C., 70, followed *KING-EMPEROR v. BANYA BHIVA* (S.B., 1901)

[I. L. R., 25 Bom., 712

2.—Postponement—Criminal Procedure Code (Act V of 1898), ss. 891, 897—Sentence of whipping by Second-class Magistrate—Appeal—Application for postponement of sentence till hearing of appeal—Refusal—Validity.—When a Second-class Magistrate passes a sentence of whip-

e. EMPRESS (1902) . I. L. R., 28 Mad., 465

WHIPPING ACT (VI OF 1864).

See WHIPPING.

WIDOW.

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.
[7 C. W. N., 878

See HINDU LAW—

ALIENATION—ALIENATION BY WIDOW;

MAINTENANCE—RIGHT TO MAINTENANCE—

DAUGHTER;

[I. L. R., 28 Cal., 278

SON'S WIDOW;

WIDOW;

WIDOW—concluded.

See HINDU LAW—concluded.

PARTITION—RIGHT TO PARTITION
—WIDOW;

WIDOW.

See MAHOMEDAN LAW—

DOWER;

WIDOW.

WIFE.See DEFAMATION—IMPUTATION ON A
WIFE.

See HINDU LAW—HUSBAND AND WIFE

See HUSBAND AND WIFE

See MARRIED WOMAN.

See RESTITUTION OF CONJUGAL RIGHTS.

—costs of—See DIVORCE ACT (IV OF 1869)
[I. L. R., 30 Calc., 631]See DIVORCE ACT (IV OF 1869), s. 7.
[I. L. R., 29 Calc., 619]**—maintenance of—**See MAINTENANCE, ORDER OF CRIMINAL
COURT AS TO**WILL.**

Col.

| | |
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| 1. VALIDITY OF WILL . . . | 1162 |
| 2. CONSTRUCTION . . . | " |

See HINDU LAW—

ADOPTION—WHO MAY OR MAY NOT
ADOPT,
[I. L. R., 26 Bom., 491]

WILL.

See MAHOMEDAN LAW—WILL

See ONUS OF PROOF—WILL.

See PRACTICE—CIVIL CASES—PROBATE
[I. L. R., 30 Calc., 528]

See PROBATE.

—construction of—

See EXECUTOR. I. L. R., 26 Bom., 571

See HINDU LAW—GIFT—CONSTRUCTION
OF GIFTS. I. L. R., 29 Calc., 260

See LIFE ESTATE. 5 C. W. N., 569

—execution of—See PARDANASHIN WOMEN
[5 C. W. N., 505]**—invalidity of—**See PROBATE—OPPOSITION TO, AND RE-
VOCATION OF, GRANT
[5 C. W. N., 383]**WILL—continued.****—pencil alterations in—**See PROBATE—OF WHAT DOCUMENTS
GRANTED. I. L. R., 29 Calc., 311**1. VALIDITY OF WILL.**

1.—Addendum—Will of Oudh Talukdar not registered under Oudh Estates Act (I of 1869), s. 13—Subsequent addendum executed and duly registered, referring to and explaining will.—Where a will made by an Oudh Talukdar was executed on the 29th of April, 1881, but was not registered within one month of its execution, under s. 13 of the Oudh Estates Act (I of 1869), and on the 26th of April, 1883, an addendum was made to it, in which the will was referred to and explained, and the addendum was then duly executed as a will and registered on the same day, an objection that the original will had not been registered in accordance with s. 13 of the Oudh Estates Act, and was therefore invalid, was overruled, and the document was held to be effective as a testamentary instrument, whether the addendum was regarded as a codicil or a will. SATEVJA KUNWAR v. HULAS KUNWAR (1902) [I. L. R., 25 All., 121]

2.—Forged will—Probate and Administration Act (V of 1881), s. 84—Acts done by a person under a title created by a will which has been declared to be a forgery are void. But any lawful payments made by a person to whom probate of such a will was granted but subsequently revoked may be re-imbursed out of the estate of the deceased, under s. 84 of the Probate and Administration Act. PUNDIT PRATAP RAY v. GOURKARN PERSHAD TAWARI (1902) 6 C. W. N., 787

3.—Unsoundness of mind—Application for probate—Plea of unsoundness of mind on the part of the testator—Burden of proof—If a party writes or prepares a will under which he takes a benefit, or if any other circumstances exist which excite the suspicion of the Court, and whatever their nature may be, it is for those who propound the will to remove such suspicion, and to prove affirmatively that the testator knew and approved the contents of the will; and it is only where this is done that the onus is thrown upon those who oppose the will to prove fraud, or undue influence, or whatever they rely on to displace the case for proving the will.

2 CONSTRUCTION.

4.—Attesting legatee—Succession Act (X of 1865), ss. 90, 91—Bequest to three children "or the survivors or survivor of them"—Incapacity of one to take by his attestation of the will—Residuary bequest to widow—Construction—Doctrine

WILL—continued.

2. CONSTRUCTION—continued.

of acceleration.—By his will, a testator, after giving a life interest in certain property to his wife, directed that after her death the property should be divided into equal shares between his "three children, James, Cornelius and Florence, or the survivors or survivor of them;" and the will contained a residuary bequest in favour of the wife. James (who was appointed a trustee) was an attesting witness to the will. The widow having died, Florence brought this suit, seeking to have it declared that James was incapacitated from taking under the will (by reason of his having attested it) and that she was entitled to a moiety of the property bequeathed. *Held* that the share of the legacy to James, which had lapsed, fell into the residue. The effect of the bequest to the three children "or the survivors or the survivor of them" would, in case James had predeceased the testator, have been to take the case out of the ordinary rule that a legacy lapses where the legatee dies during the lifetime of the testator. But, as the two children had not survived James, the contingency on the happening of which they were to take had not happened. The testator having made a testamentary disposition which was incapable of

WILL—continued.

2. CONSTRUCTION—continued.

A L B, who assigned the interest he took under both sales to *H* for ₹9,000. In a suit by *H* in 1895 for construction of the will, and for a declaration of the rights of the parties under it, the High Court, on the view that *F* would, on their construction of the will, be entitled to a large amount of accumulations of the moiety, which together with her allowance she had been induced to part with to *A L B* for only ₹3,000, *held*, on the facts, that the bargain was an unconscionable one and could not be sustained. On the construction

6.—Charitable gift—Succession Act (X of 1865), ss. 90 and 105—Hospitals, gifts to—Registration of gifts to hospitals—Corporate bodies,

5.—Bequest to "eldest son to be born"—Bengali will—Terms of art—Words, of direct and

propriety of—*Ex parte* hearing—Re-hearing, application by respondent for—Unconscionable bargain.—In construing Bengali wills, it must be remembered that there is no line of precedents attaching to Bengali terms meanings which make them understood as terms of art by Bengali lawyers. The only safe course is to give to the words their plain and ordinary meaning. There are no particular words necessary to the vesting of a bequest or a legacy. The words "*pariyapla kabeek*" whether they mean "descend to" or "devolve or go" or "shall become vested," have the effect of vesting the legacy at once. Where there is a bequest in favour of a person simply, it confers a vested interest, and the appointment of an executor and

the Hospital named. The gift was accordingly valid.

FANINDRA KUMAR MITTAL v. ADMINISTRATOR-GENERAL OF BENGAL (1901) . 6 C. W. N., 321

7. Charitable purposes—Uncertainty.—A testator directed that after the death of his wife, and in default or on failure of issue, his trustees should bestow certain trust premises and the

with propriety rest it on the authority of one who has not heard the arguments and is not responsible for the decision, though he also may be a Judge of the High Court. *F* had in August, 1892, sold her interest in a certain moiety under a will, together with an allowance of ₹50 per month, which she took under the will, to one *A L B*, and *H* on the same date disposed of all his interest in the said moiety to

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tection
oid for
C. J.
DADY

WILL—continued.**2. CONSTRUCTION—continued.**

8. ————— *Succession Act (X of 1865), s. 105—Bequest to charitable uses by a testator leaving a widow him surviving—Validity—“Nearer relative” than a nephew or niece—By s. 105 of the Indian Succession Act, no man having a nephew or niece or any “nearer relative” shall have power to bequeath any property to charitable uses,*

9. ————— *Executor—Suit by legatees against executor for arrears of rent—Limitation—A Hindu died leaving a son, a daughter, a widow and a brother's widow. He left a will whereby he directed that the two widows should receive “half and half” the annual income realized from the four houses which he specified, and that on the death of one of them the survivor should take the whole for her life. The son was to make repairs and to pay the municipal taxes payable in respect of the said houses, but he was to have “no manner of right whatever to the income” thereof. He was also to provide the widows with food and*

the arrears of rent for the whole period claimed
RANDHAN v. MANIRAI (1900)

[I. L. R., 25 Bom., 429]

10. ————— *The testator in his will made use of the following expression with reference to expenses for pujas, etc.—“You (i.e., the executors) are to pay my share of the expenses whatever*

Boss (1902) . . . I. L. R., 30 Calc., 369;
[a.c., 7 C. W. N., 353]

WILL—concluded.**2. CONSTRUCTION—concluded.**

11. ————— *Executor by implication—Probate and Administration Act (V of 1831), s. 7—Will, construction of—Oases—Co-adjutor—Overseer—On a construction of the will, held that the shebait was appointed executor of the will by necessary implication, within the meaning of s. 7 of the Probate and Administration Act, and that the persons appointed as oases were merely co-adjutors or overseers. BROJO CHUNDER GOSWAMI v. RAJ KUMAR ROY (1901)*

[8 C. W. N., 310]

made to the legatee on his attaining majority, and that the will conferred on the executor no right to the income. The executor applied for leave to appeal to the Privy Council, and contended that the matter in dispute was of the value of Rs. 10,000, as required by s. 696 of the Civil Procedure Code, inasmuch as it involved the right to the whole fund.

as a trustee, and the only question was as to the income. *HUSEYBHOY AHMEDBOY v. AHMEDBOY HARBHOY (1901)* . . . I. L. R., 28 Bom., 319

WINDOW.

See PRESCRIPTION—EASEMENTS—

LIGHT AND AIR;

[I. L. R., 28 Bom., 374]

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WITHDRAWAL OF APPEAL.

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WITHDRAWAL OF CRIMINAL PROCEEDINGS.

See COMMITMENT . . . 5 C. W. N., 411

See MAGISTRATE—WITHDRAWAL OF CASES.

WITHDRAWAL OF SANCTION TO BUILD.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT (II OF 1888), ss. 247, 250, 427 . . . I. L. R., 30 Calc., 317

WITHDRAWAL OF SUIT.

See LETTERS PATENT, HIGH COURTS, 1865, CL. 12 I. L. R., 34 Mad., 293

1.—After award made—Civil Procedure Code (Act XIV of 1882), s. 373 and Ch. XXXVII.—Withdrawal of suit after an award is made by an arbitrator.—The powers relating to withdrawal of suits, conferred upon the Court by s. 373, Civil Procedure Code, are, when an award of an arbitrator to whom the case is referred for arbitration has once been duly made by the arbitrator, limited by the particular provisions contained in Ch. XXXVII of that Code. So, where, upon an award made by the arbitrator, the plaintiff put in a petition of objection to the award, and subsequently, on his putting in a petition for permission to withdraw the suit with liberty to bring a fresh suit, the Court granted such prayer under s. 373, Civil Procedure Code: Held that the order of the Court was without jurisdiction. *DESI CHURN MANNA v. BIPRA PRASAD JANA* (1902) . . . 7 C. W. N., 188

2.—By Small Cause Court, after granting a new trial—Presidency Small Cause Courts Act (XV of 1892, as amended by Act I of 1895), s. 88—New trial—Civil Procedure Code (Act XIV of 1882), s. 378—Withdrawal of a suit—Jurisdiction of the Small Cause Court to pass an order under s. 378 of the Civil Procedure Code after

revisional jurisdiction ceased, and then they had passed the order. *CHAKRAVARTI* (1902) . . . I. L. R., 29 Calc., 239

3.—Effect of withdrawal—Civil Procedure Code, s. 373—Suit for partition—Withdrawal of suit—Joint petition of parties, praying that the suit might be struck off—Subsequent suit for partition of same property barred.—The plaintiff and the defendants in a suit for partition, having arrived

The terms of the compromise were not, however, inserted in the decree, and were never carried out.

WITHDRAWAL OF SUIT—concluded.

Subsequently the plaintiff brought a second suit for partition of the same property. Held that it was incumbent on the plaintiff to see that the Court did its duty and recorded a proper order in the suit with reference to s. 375 of the Code of Civil Procedure, and that, as he had not done so, he must be taken to have

4. ——— Limitation Act (XV of 1877), Sch. II, Art. 120—Alienation by widow—Subsequent suit to set it aside—Withdrawal of suit without permission to bring a fresh suit—Confirmation of original alienation—Fresh cause of action to sons of the daughters—V, who was

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3. CONSIDERATION AND WEIGHT OF EVIDENCE . . . "

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1. SUMMONING AND ATTENDANCE OF WITNESSES

1.—Postponement—Direction of Court—Adjournment for production of witnesses—Irregularity or error affecting merits—Code of Civil Procedure (Act XIV of 1882), s. 578—The question of the proper exercise of discretion of lower Courts to grant time to parties to produce further evidence discussed. *SUBRAMONI DAS v. KALI RANTA DAS* (1900). . I. L. R., 28 Calc., 37; [S.C., 5 C. W. N., 195]

2.—Civil Procedure Code (Act XIV of 1892), s. 162—Summons forms Nos. 125, 126—Summons to witness—Postponement of hearing of case—Necessity for issuing fresh summons—Practice—When a witness has been summoned to give evidence in a case which is not reached, it is not necessary to issue a fresh summons to the witness. He need only be warned that his attendance will be required on the day to which the hearing of the case may be postponed. *SUBBARAYADU v. CHENCHURAMAYYA* (1900)

[I. L. R., 24 Mad., 300]

2. EXAMINATION OF WITNESSES.

CROSS-EXAMINATION

3.—Witness proving hostile; refusal by Court of permission to cross-examine, effect of—Where one's own witness unexpectedly makes statements

the evidence is of no value. *KALAGUELA SUBANARAYANA v. YARLAGADDA NAIDOO* (P.C., 1902)

[5 C. W. N., 513]

3. CONSIDERATION AND WEIGHT OF EVIDENCE

4.—Findings of fact by first Court, upset by Appellate Court—Credibility of witnesses—Witness proving hostile, refusal by Court of permission to cross-examine, effect of—Documentary evidence, direct and indirect, in respect of business transactions, relative value.—A case in which the Appellate Court questioned the credibility of witnesses

allowed the evidence is of no value. *J., a trader in*

WITNESS—CIVIL CASES—concluded.

3. CONSIDERATION AND WEIGHT OF EVIDENCE—concluded.

against *J.*, at which, in spite of *J.*'s plea of payment to *B* and evidence by him and *X* to that effect, *J.* was declared an insolvent. Later on, *B* on behalf of *F*

WITNESS—CRIMINAL CASES.

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| 1. PERSONS COMPETENT OR NOT TO BE WITNESSES | 1171 |
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—deposition of—

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—evidence of witness partly against and partly in favour of accused—

See CRIMINAL PROCEDURE CODE, s. 430.
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WITNESS—CRIMINAL CASES— continued.

2. SUMMONING WITNESSES—concluded.

trate's, upon applications—Irregularity—Criminal Procedure Code (Act V of 1898), ss. 133, 137—In every petition made before him, a Magistrate should make an order either granting or refusing it. An order merely to "file" it is improper. A party has a right to call upon the Court to compel the attendance of witnesses who had been summoned and had neglected to attend. *Ho*, when, in a proceeding under s. 133 of Cr.P.C. (summons) Defendant as defendant.

LIJAMBAH DAS (2000) . . . U. L. W. 14, 440

8. ———— *Witness for defence, attendance, Judge's duty to enforce*—It is not for the Judge, but for the accused himself, to decide what

9. ———— *Criminal Procedure Code (Act V of 1898), ss. 257, 177, 110—Security for good behaviour—Magistrate—Summons—Refusal to summon—Procedure.*—S. 257 of the Criminal Procedure Code (Act V of 1898) is imperative in its terms. It leaves to a Magistrate no discretion to refuse to issue process to compel the attendance of any witness, unless he considers that the application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice: such ground, however, must be recorded by him in writing. The discretionary power of refusing to summon any particular witness is vested in the Magistrate, but the order of refusal must be such as to show in writing the ground of refusal as applied to each individual. *EMPEROR v. PURSHOTAM KARA (1902)* . . . I. L. R., 28 Bom., 418

3. STATEMENTS OF WITNESSES.

10. — *Witnesses, statements of—Police investigation—Power of Magistrate to record statements not voluntarily made—Duty of police when fear of witnesses being gained over—Magistrates, Bench of; power of member to act independently—Murder—Suspicion—Criminal*

WITNESS—CRIMINAL CASES— continued.

3. STATEMENTS OF WITNESSES—concluded.

11. — *Witnesses, statements of—Criminal Procedure Code, on the ground that there was every chance of their being gained over—That statements . . . be accused, . . . that the . . . witnesses . . . did not . . . Honorary*

(I. L. R., 29 Cal., 483;
s.c., 6 C. W. N., 596)

4 EXAMINATION OF WITNESSES.

(a) GENERALLY.

11. — *Witnesses for the defence, omission to file list of, effect of, when witnesses actually in attendance—Adjournment asked for examining witnesses, grounds for refusing—Sitting of Court . . . ng a . . . their . . . have . . . for . . . an adjournment, so as to examine certain witnesses*

opportunity to examine such witnesses as they might wish to produce on their behalf. *EMPEROR v. KESO SINGH (1903)* . . . 7 C. W. N., 714

(b) EXAMINATION BY COURT.

12. — *Witness examined by Court—Opportunity to accused to cross-examine—Dishonestly receiving stolen property—Criminal Procedure Code (Act V of 1898), ss. 333 and 540.*—During the trial of a case,

WITNESS-CRIMINAL CASES— concluded.

4. EXAMINATION OF WITNESSES—concluded.

(b) EXAMINATION BY COURT—concluded.

the witness attended, the accused declined to examine him. He was thereupon examined by the Court; and, upon the accused claiming the right to cross-examine the witness, the Court refused to allow him to do so. *Held* that, under the circumstances, the witness could not be regarded as a witness for the defence, and that the accused should have been given an opportunity to cross-examine him. **MONDRO NATH DAS GUPTA v. EMPEROR (1902)**. I. L. R. 29 Calc., 387; [S.C., 11 C. W. N., 550]

(c) CROSS-EXAMINATION.

13.—*Accused—Defence—Evidence Act (I of 1872), s. 154—Code of Criminal Procedure (Act I of 1898), s. 237—Prosecution—Certain witnesses for the prosecution were examined. The accused applied to the Court for an adjournment, to enable them to cross-examine the witnesses he charged.* The

witnesses were summoned, and, when Counsel for the accused proceeded to cross-examine them, he was not allowed to do so. *Held* that the mere fact that the accused had been compelled to treat the witnesses for the prosecution as their own witnesses did not change the position. **FRANKASH SINGH v. RAWLINS (1901)** [I. L. R., 29 Calc., 594]

14.—*Criminal Procedure Code (Act I of 1898)—Cross-examination of prosecution witnesses—Expenses of recalling witnesses—Where the witnesses for the prosecution were cross-examined before the framing of the charge, on the understanding that the accused would not require the witnesses to be recalled for further cross-examination after the charge; Held* that it was not open to the Magistrate to refuse the application of the accused that the witnesses might be recalled after the charge had been framed. *Also*, that, in the circumstances, it was proper that the accused should pay the expenses of recalling witnesses, which they had offered to pay. **KOKIL GHOSH v. KASIMUDDIN MALITA (1902)** [8 C. W. N., 424]

WOMAN.

See DAUGHTER.
See DAUGHTER IN-LAW.
See MARRIED WOMAN.
See FARDAYASHIN WOMEN.
See WIDOW.
See WIFE

WORDS.

—"abatement of rent", in Act XII of 1881, Ch. II—

DESI PRASAD KHAN v. DEKKHI RAI (1901). I. L. R., 23 All., 270

—absence—

See post, "IN THE ABSENCE OF A CONTRACT TO THE CONTRARY."

See post, "IN THE EVENT. . . OF HIS ABSENCE, 'ETC.'"

—"abstain from a certain act", in Act V of 1898, s. 144—

QUEEN-EMPRESS v. ABDULLA SAHIB (1900). I. L. R., 24 Mad., 263

RAMANADHAN CHETTI v. MURUGAPPAN CHETTI (1900) [I. L. R., 24 Mad., 45]

—arbitration—

See post, "ALL IMPOSITIONS UPON TENANTS UNDER THE DENOMINATION OF ARBITRAGE."

—access—

See post, "PLACE TO WHICH THE PUBLIC HAVE ACCESS."

—accordance—

See post, "IN ACCORDANCE WITH LAW."

—"accused person", in Act V of 1898, s. 437—

IMAN MANDAL v. EMPRESS (1900) [8 C. W. N., 163]

—act—

See ante, "ABSTAIN FROM A CERTAIN ACT."

—"actionable claim", in Act IV of 1882, s. 135—

MATHURA DAS v. MURTHIDHAR (1902) [I. L. R., 24 All., 517]

—"actual possession"—

RATIL BEGAM v. MANSHUR ALI KHAN (1901). I. L. R., 21 All., 17; [S.C., I. L. R., 23 I. A., 218; 8 C. W. N., 688]

—add—

See post, "SHALL ADD TO ANY EXISTING ENCUMBRANCE."

—adjusted—

See post, "IF A SUIT BE ADJUSTED."

—administration—

See post, "WHENEVER THE DIRECTION OF THE COURT IS DEEMED NECESSARY FOR THE ADMINISTRATION OF SUCH TRUST."

WORDS—continued.

—“affecting the decision of the case”, in Act XIV of 1882, s. 591—

GULAB KUNWAR v. THAKUR DAS (1902)
[I. L. R., 24 All., 464]

TASANDUQ HUSAIN v. HAYAT-UN-NISSA (1903). I. L. R., 25 All., 280

—aggravated—

See post, “PERSON AGGRAVED.”

—agricultural purposes—

See post, “SOLELY FOR AGRICULTURAL PURPOSES.”

—alienate—

See post, “NO POWER TO ALIENATE.”

—“all impositions upon tenants under the denomination of abwab”, in Act VIII of 1885, s. 74—

JOTINDRA MOHAN TAGORE v. CHANDRA NATH SAPI (1902)
[6 C. W. N., 360]

—“all proceedings under this Act between party and party”, in Act IV of 1869, s. 45—

RAMSAY v. BOYLE (1903)
[I. L. R., 30 Calc., 489]

—“all stipulations and reservations for the payment of such”, in Act VIII of 1885, s. 74—

JOTINDRA MOHAN TAGORE v. CHANDRA NATH SAPI (1902)
[6 C. W. N., 360]

—“all the parties to a suit”, in Act XIV of 1882, s. 508—

PITAM MAL v. SADIQ ALI (1898)
[I. L. R., 24 All., 229]

—alter—

See post, “MATERIALLY ALTER THE STRUCTURE OF ANY HOUSE”

—“always and for ever”—

AZIM-UN-NISSA v. TASANDUQ HUSAIN (1901)
[6 C. W. N., 569;
s.c., I. L. R., 23 All., 324;
I. L. R., 29 I. A., 65]

—“and it shall be also lawful for the Court, on those or any other occasions”, in 11 & 12 Vict., c. 31, s. 38—

IN THE MATTER OF CHUKI LAL OSWAL (1902). I. L. R., 29 Calc., 503

—“any dispute shall arise respecting the right of succession”, in Act XX of 1863, s. 5—

GOPALA AYYAR v. ARUNACHALLAM CHETTY (1902) I. L. R., 26 Mad., 85

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—any interest—

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—“any other reasonable cause”, in Act XVIII of 1879, s. 13 (f)—

IN THE MATTER OF JOGENDRA NARAYAN BOSE (1900) 5 C. W. N., 48
LEKSHMIER v. WAJID HOSSAIN (P.B., 1902) I. L. R., 29 Calc., 890;
s.c., 6 C. W. N., 558

—“any person having any interest in or charge upon the property”, in Act IV of 1882, s. 51 (a)—

GIRISH CHUNDER DEY v. JURAMONI DE (1900) 5 C. W. N., 83

—“any person whose immovable property has been sold”, in Act XIV of 1882, s. 310A—

KEDAR NATH SEN v. UMA CHARAN (1900)
[6 C. W. N., 57]

—“any such offence”, in Act XLIV of 1860, s. 234—

DEO SAHAY LAL v. QUEEN-EMPRESS (1900)
[I. L. R., 29 Calc., 253;
s.c., 5 C. W. N., 289]

—any sufficient cause—

See post, “PREVENTED BY ANY SUFFICIENT CAUSE”

—“anything which the landlord is, under this Act, required or authorised to do”, in Act VIII of 1885, s. 188—

SURE BANADUR SAHU v. MACKENZIE (1902) 7 C. W. N., 400

—appeal—

See post, “COURT TO WHICH APPEALS ORDINARILY LIE”

See post, “ORDER MADE ON APPEAL.”

—, in Act XV of 1877, s. 5—

SARAT CHANDRA DEY v. BROJESHWARI DASGI (1903)
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—application—

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—apprehension—

See post, “ASSISTING A PERSON IN ANY WAY TO EVADE APPREHENSION.”

—area—

See post, “THE AREA FOR WHICH RENT HAS BEEN PREVIOUSLY PAID”

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—armed—

See post, "GOES ARMED."

—article—

See post, "MEDICATED ARTICLE."

—assessment—

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—"assistance", in Act XLV of 1860^s 187—

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[I. L. R., 28 Mad., 419]

—"assisting a person in any way to evade apprehension", in Act XLV of 1860, s. 218B—

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LORD IS, UNDER THIS ACT, REQUIRED
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—"award", in Act I of 1894—

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[I. L. R., 30 Calc., 36;

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—"become useless and inoperative", in Act V of 1881, s. 50 (4)—

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—benefit—

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INMATES OF THE HOSPITAL."

—"bhog"—

RAM KRISHNA MANAPATRA v. MORUNT
PADMA CHARAN DES GOSWAMI (1902)

[8 C. W. N., 683]

—"bind down"—

SURESH DOSADH v. RAM PRIGASH SINGH
(1902) . . . I. L. R., 30 Calc., 443;

[S.C., 7 C. W. N., 174]

—"bound by law to pay", in Act IX of 1872, s. 69—

BEJIV BEHARI SARVOKAR v. KALIDAS
CHATTERJEE (1901)

[8 C. W. N., 336]

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—"breach of promise of marriage", in Act XV of 1882, s. 19 (q)—

MUHAMMAD ASHRUFF HUSSAIN SAHIB
v. MUHAMMAD ALI (1901)

[I. L. R., 24 Mad., 652]

—"breach of the peace—

See post, "OFFENCES INVOLVING A
BREACH OF THE PEACE."

—"but of a lower class", in Manu, Ch. IX, verse 122—

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SINGH (1901) . . . 5 C. W. N., 602;

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L. R., 26 I. A., 100]

—"by a ship"—

THE "TELENA" (1901)

[I. L. R., 29 Calc., 402;

S.C., 8 C. W. N., 773]

—"by way of wager", in Act IX of 1872, s. 30—

KONG YU LOKE & Co v. LOWJEE NANJEE
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See post, "COMMON CARRIERS"

—case—

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THE CASE."

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—in Act V of 1898—

LOHIT MOHAY MOITRA v. SURYA
KANT ACHARYEE (1901)

[I. L. R., 28 Calc., 709;

S.C., 5 C. W. N., 749]

—in Act II of 1899, s. 57—

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—caste—

See post, "SHALL BE OF ANY OF THE
LOWER CASTES," ETC.

—cause—

See ante, "ANY OTHER REASONABLE
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See post, "COSTS IN THE CAUSE."

See post, "GOOD CAUSE."

See post, "OTHER REASONABLE CAUSE."

See post, "PREVENTED BY ANY SUFFI-
CIENT CAUSE."

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—certificate—

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—charge—

See ante, “ANY PERSON HAVING ANY
INTEREST IN OR CHARGE UPON THE PRO-
PERTY.”

See post, “FALSE CHARGE.”

—in Act XIV of 1860, s. 211—

RAYAN KUTTI v. EMPEROR (1903)
[I. L. R., 26 Mad., 640]

—chattels—

See post, “GOODS AND CHATTELS”

—claim—

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—class—

See ante, “BUT OF A LOWER CLASS.”

—“clearing”, in Mad. Act IV of 1882,
s. 21 (a)—EMPEROR v. VENKATTA PRABHU (1902)
[I. L. R., 26 Mad., 470]

—“cocaine”—

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(1903) . . I. L. R., 27 Bom., 551

—“comes”, in Act II of 1899, s. 33 (1)—

KING-EMPEROR v. BALU KUPPAYAN
(1901) . . I. L. R., 25 Mad., 525

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See post, “ORDER HIM TO BE COMMIT-
TED FOR TRIAL.”See post, “SUFFICIENT GROUNDS FOR
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—“common carriers”—

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KALIDAS MUKHERJI (1901)
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—community—

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COMMUNITY.”

See post, “VILLAGE COMMUNITY.”

—competent jurisdiction—

See post, “COURT OF COMPETENT JURIS-
DICTION”

—“complaint”—

in Act V of 1898, s. 4 (A)—

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DHURI (1900) 5 C. W. N., 108

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TARA PRASAD LAHA v. EMPEROR
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[I. L. R., 30 Calc., 910]—“continuing wrong”, in Act XV of
1877, s. 23—RAJAH OF VENKATAGIRI v. ISAKAPALLI
SUBBIAH (1902)
[I. L. R., 26 Mad., 410]

—contract—

See post, “IN THE ABSENCE OF A CON-
TRACT TO THE CONTRARY”—“contract in writing, registered”, in
Act XV of 1877, Sec. II, Art. 116—KOTAPPA v. VALLUR ZAMINDAR (1901)
[I. L. R., 25 Mad., 50]SESHACHALA NAICKAR v. VARADA
CHARIAR (1901)

[I. L. R., 25 Mad., 55]

—contrary—

See post, “IN THE ABSENCE OF A CON-
TRACT TO THE CONTRARY.”—“convenient and fitting”, in Mad. Act I
of 1884, s. 392—MUHAMMAD MOHIDIN SAIT v. MUNICIPAL
COMMISSIONERS FOR THE CITY OF
MADRAS (1901)
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—“costs in the cause”—

TEMPLETON v. LAURIE (1900)
[I. L. R., 25 Bom., 230]

—“Court”—

HARI PANDURANG v. SECRETARY OF
STATE FOR INDIA IN COUNCIL (1903)
[I. L. R., 27 Bom., 424]See also post, “WHENEVER THE DIREC-
TION OF THE COURT, ETC.”

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—“Court”—concluded.

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ERZA v. SECRETARY OF STATE (1903)

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—“Court of competent jurisdiction”, in Act V of 1888, s. 537—

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—“Court to which appeals ordinarily lie”, in Act V of 1888, s. 195 (7)—

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[I. L. R., 30 Calc., 394;

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—“creditor”—

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VENKAPPA SRANOG (1902)

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—“criminal case”—

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—“criminal force”, in Act V of 1888, s. 522—

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—“crops or other produce of land”, in Act V of 1888, s. 146 (2)—

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—“current year”, in Act XI of 1859, s. 5—

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—“date of payment”—

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—“date of sale”—

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—daughter-in-law—

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—“debt”, in Act VII of 1889, s. 4—

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(1900) . I. L. R., 24 Mad., 22

—debtor—

See post, “RIGHT, TITLE AND INTEREST OF THE DEBTORS.”

See post, “SAME JUDGMENT-DEBTOR.”

—decision—

See ante, “AFFECTING THE DECISION OF THE CASE.”

—decree—

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[I. L. R., 27 Bom., 415]

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VIKRAMADRO MAHARAJULUM GARU v. NEELADEVI PATTAMADHADEVI GARU (1902) . I. L. R., 28 Mad., 208

—decree-holder—

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in Act XIV of 1882, s. 311—

BEJOY SINGH DUDHURIA v. HUKUM CHAND (1902)

[I. L. R., 29 Calc., 548]

—defaulter—

See post, “MOVABLE AND IMMOVABLE PROPERTY OF A DEFAULTER.”

—“dependent daughter-in-law”—

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—“dependent member”—

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—description—

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—determination—

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—determined—

See post, “IN WHICH THE RENT PAYABLE BY THE TENANT HAS BEEN A MATTER IN ISSUE AND HAS BEEN DETERMINED”

—“devolution of any interest”, in Act XIV of 1882, s. 372—

SOURINDRA MOHUN TAGORE v. SIRONOMI DEBI (1900)

[I. L. R., 28 Calc., 171; s.c., 5 C. W. N., 307]

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[I. L. R., 24 Mad., 186]

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[6 C. W. N., 183]

—“dishonestly”, in Act XLV of 1880—

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[I. L. R., 25 All., 81]

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—dispute—

See ante, “ANY DISPUTE SHALL ARISE.”

See post, “PARTIES CONCERNED IN SUCH DISPUTE.”

See post, “SUBJECT OF DISPUTE”

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—“distant kindred”—

ABDUL SERANG v. PUTER BIRI (1903)

[I. L. R., 29 Calc., 738]

—distinct matters—

See post, “INSTRUMENT COMPRISING OR RELATING TO SEVERAL DISTINCT MATTERS.”

See post, “SEVERAL DISTINCT MATTERS.”

—distrainer—

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—“disturbance”, in Act XLV of 1880, s. 208—

VJNARAGHAVA CHARAR v. EMPEROR (s.b., 1903) . I. L. R., 28 Mad., 554

—document—

See post, “FALSE DOCUMENT.”

—done—

See post, “SUCH THING TO BE DONE.”

—drug—

See post, “INTOXICATING DRUG.”

—due diligence—

See post, “PROSECUTING WITH DUE DILIGENCE.”

WORDS—continued.

—duties—

See post, "IN THE EVENT
OF HIS BEING INCAPACITATED
FOR THE PERFORMANCE OF HIS DUTIES,"
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—"dwell"—

FERNANDEZ v. WRAY (1900)
[I. L. R., 25 Bom., 176]

—efficient—

See post, "RENDERING SUCH FORCE EFFICIENT
IN THE DISCHARGE OF ALL ITS
DUTIES."

—"ekjaddi"—

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[I. L. R., 23 All., 33]

—"eldest son to be born"—

HARRIS v. BROWN (1901)
[I. L. R., 28 Calc., 631;
s.c., 5 C. W. N., 729;
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—embankment—

See post, "SHALL ADD TO ANY EXISTING
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in Bengal Act II of 1883, s. 3—

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(1900) 5 C. W. N., 108

—end—

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—engaged—

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—"English mortgage", in Act IV of 1882,
s. 58 (c)—

NARAYANA ATTAR v. VENKATARAMANA
ATTAR (s.d., 1902)
[I. L. R., 25 Mad., 220]

—"enhance the sentence", in Act V of
1898, s. 423 (b)—

VENKURI SESHANNA (1902)
[I. L. R., 26 Mad., 421]

—"enticing away", in Act XLV of 1880,
s. 498—

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[I. L. R., 26 Mad., 483]

—"entire estates", in Madras Regula-
tion XXVI of 1902, s. 3—

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(1902) I. L. R., 26 Mad., 521

WORDS—continued.

—entitled—

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TUTE A SUIT OR MAKE AN APPLI-
CATION."

—equitable—

See post, "FAIR AND EQUITABLE."

—estate—

See ante, "ENTIRE ESTATES."
See post, "INTEREST IN THE ESTATE OF
THE DECEASED."

—evade—

See ante, "ASSISTING A PERSON IN ANY
WAY TO EVADE APPREHENSION."

—execution—

See post, "STAMPED AT THE TIME OF
EXECUTION."

in Act XIV of 1882, s. 545—

BRIJ COOMAR v. RAMBRICK DASS (1901)
[5 C. W. N., 781]

—"execution or satisfaction of the
decree", in Act XIV of 1882, s. 244—

KASINATHA ATTAR v. UTHUMANA ROW-
THAN (1901) . I. L. R., 25 Mad., 529

—"exercised a jurisdiction not vested in
it by law", in Act XIV of 1882,
s. 622—

KEDAR NATH SEN v. UMA CHAMAN
(1900) 6 C. W. N., 57

—failure of justice—

See post, "OCCASIONED A FAILURE OF
JUSTICE"

—"fair and equitable", in Act VIII of
1885—

HEM CHANDRA CHOWDHRY v. KALI PRO-
SANTA BHADURI (1903)
[I. L. R., 30 Calc., 1033;
s.c., I. R., 30 I. A., 177]

—"false charge", in Act XLV of 1880,
s. 211—

RAYAN KUTTI v. EMPEROR (1903)
[I. L. R., 26 Mad., 640]

—"false document", in Act XLV of 1880,
s. 464—

KEDAR NATH CHATTERJEE v. KING-
EMPEROR (1901) . . 6 C. W. N., 897

—"final"—

MASTANGINI DEBI v. GIRISH CHUNDER
CHONGDAR (1903)
[I. L. R., 30 Calc., 619;
s.c., 7 C. W. N., 433]

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—finding—

See post, "REVERSE THE FINDING AND SENTENCE."

—fitting—

See ante, "CONVENIENT AND FITTING."

—for ever—

See ante, "ALWAYS AND FOR EVER"

—"for payment to the decree-holder," in Act XIV of 1882, s. 310 A (b)—

ROSRUN LALL v. RAM LALL MULLICK
(1903) . I. L. R., 30 Calc., 283;
s.c., 7 C. W. N., 341

—"for that end", in Act XLV of 1860, s. 390—

OTARUDDI MANJHI v. KAFILUDDI
MANJHI (1900) . 5 C. W. N., 373

—"for the benefit of the inmates of the hospital"—

FANINDRA KUMAR MITTER v. ADMINIS-
TRATOR-GENERAL OF BENGAL (1901)
[6 C. W. N., 381]

—"for the purpose of cross-examina-
tion", in Act V of 1898, s. 257—

SHROPRAKASH SINGH v. RAWLINS (1901)
[I. L. R., 28 Calc., 594]

—forbearance—

See post, "MERE FORBEARANCE."

—force—

See ante, "CRIMINAL FORCE."

—"foreigner"—

KASSIM MAHOONJI v. ISUF MAHOMED
SULLIMAN (1902)
[I. L. R., 29 Calc., 509;
s.c., 8 C. W. N., 828]

—"found therein", in Bom. Act IV of
1887, s. 8—

EMPEROR v. WALLI MUSSAJI (1902)
[I. L. R., 36 Bom., 641]

—"fraud, surprise or mistake, or such
other special ground"—

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COOMAR DUTT (1901)
[I. L. R., 28 Calc., 273;
s.c., 5 C. W. N., 337]

—"fraudulently", in Act XLV of 1860—

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[I. L. R., 25 All., 31]
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EMPEROR (1901) . 5 C. W. N., 897

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—"frivolous", in Act V of 1898, s. 250—

HEMI MADHUB KUSHI v. KUMUD KUMAR
BISWAS (1902)
[I. L. R., 30 Calc., 123;
s.c., 6 C. W. N., 709]

—gaming—

See post, "INSTRUMENTS OF GAMING."

—"goods seized", in Act XI of 1878,
s. 19—

EMPEROR v. HARPAL RAI (1902)
[I. L. R., 24 All., 454]

—"good cause"—

KARUPPANA SENEYAGARAN v. SINHA
GOUNDEN (1902)
[I. L. R., 28 Mad., 480]

—"goods and chattels", in 11 & 12 Vict.,
c. 21, s. 23—

PUNITHAVELU MUDALIAR v. BASHTAM
ATTANGAR (1901)
[I. L. R., 25 Mad., 406]

—ground—

See ante, "FRAUD, SURPRISE OR MISTAKE
OR SUCH OTHER SPECIAL GROUND."

See post, "SOME SPECIAL GROUND."

See post, "SUFFICIENT GROUNDS FOR COM-
MITTING."

—guarantee—

See post, "SUM HE HAS RIGHTLY PAID
UNDER THE GUARANTEE."

—guardian—

See post, "PAWFUL GUARDIAN"

—"harbour", in Act XLV of 1860,
s. 10 B—

EMPEROR v. HUSAIN BAKSH (1903)
[I. L. R., 25 All., 261]

—"having only an imperfect title", in
Act I of 1877, s. 18—

SARJU PRASAD SINGH v. WAZIR ALI (1900)
[I. L. R., 23 All., 119]

—"hereby", in Act V of 1881, s. 86—

UMA CHARAN DAS v. MUSTAKISHI DANI
(1900) . I. L. R., 28 Calc., 149;
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—"High Court", in Act V of 1881, s. 87—

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ROY (1900) . 5 C. W. N., 377

—"Hindu"—

BRAGWAN KAU v. BOSE (1903)
[I. L. R., 28 Cal., 885;
s.c., I. L. R., 30 I. A., 249]

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—“hissadaran shikmi,” in *wajib-ul-arz*—

ABDUL SHAKUR *v.* MENDAY (1901)
[I. L. R., 23 All, 260]

—“honoured”—

NATIONAL BANK OF INDIA *v.* SALEM
MAHAMED HALAYA (1901)
[I. L. R., 25 Bom, 706]

—hospital—

See ante, “FOR THE BENEFIT OF THE
INMATES OF THE HOSPITAL.”

—house—

See post, “MATERIALLY ALTER THE STRUCTURE
OF ANY HOUSE.”

—“houses,” in Act VII of 1870—

DURGA SINGH *v.* BISHESHAR DAYAL (1898)
[I. L. R., 24 All, 216]

—“if a suit be adjusted,” in Act XIV of
1882, s. 375—

FAKIR CHAND DRY *v.* TINDOWNRY DRY (1903)
[7 C. W. N., 180]

—immovable property—

See ante, “ANY PERSON WHOSE IMMOVABLE
PROPERTY HAS BEEN SOLD.”

See post, “MOVABLE AND IMMOVABLE
PROPERTY OF A DEFAULTER.”

See post, “PERSON WHOSE IMMOVABLE
PROPERTY HAS BEEN SOLD.”

See post, “SUITS FOR LAND OR OTHER
IMMOVABLE PROPERTY”

in Act I of 1877, s. 9—

FZELUR RAHMAN *v.* KRISHNA PRASAD
(1902) . I. L. R., 29 Cal., 614

—imperfect title—

See ante, “HAVING ONLY AN IMPERFECT
TITLE.”

—imposition—

See ante, “ALL IMPOSITIONS UPON TENANTS
UNDER THE DENOMINATION OF ARBAW.”

—“imprisonment”—

MAHAMMAD YUSUFUDDIN *v.* SECRETARY
OF STATE FOR INDIA (1903)
[I. L. R., 30 Cal., 872;
ac. 7 C. W. N., 728;
I. L. R., 30 I. A., 154]

—improper description—

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—“in accordance with law,” in Act XV
of 1877, Sch. II, Art. 179—

MURARI LAL *v.* UMRAO SINGH (1901)
[I. L. R., 23 All, 499]

SUBRAMANIAM CHETTIAR *v.* RAMACHANDRA
AIYAR (1902)
[I. L. R., 26 Mad., 197]

—“in issue,” in Act VI of 1899, s. 4—

SANKARANARAYANA VADHYAR *v.* SANKARA-
NARAYANA AIYAR (1901)
[I. L. R., 25 Mad., 348]

—“in the absence of a contract to the
contrary,” in Act IV of 1882,
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RAMABHADRACHAR *v.* SRINIVASA
ATTANGAR (1900)
[I. L. R., 24 Mad., 85]

—“in the case,” in Act V of 1898, s. 337
(3)—

KING-EMPEROR *v.* BALA (1901)
[I. L. R., 25 Bom., 675]

QUEEN-EMPERESS *v.* RAMASAMI (1900)
[I. L. R., 24 Mad., 321]

—“in the event of the death, resignation
or removal of a Subordinate Judge,
or of his being incapacitated by ill-
ness or otherwise for the per-
formance of his duties, or of his
absence from the place at which
his Court is held,” in Act XII of
1887, s. 11 (1)—

GAPPU LAL *v.* MATHURA DAS (1902)
[I. L. R., 25 All, 183]

—“in which the rent payable by the
tenant has been a matter in issue
and has been determined,” in Act
XII of 1881, s. 189—

BENI PRASAD KUARI *v.* BATULAN BIRI
(1901) . I. L. R., 23 All, 283

—incapacitated—

See ante, “IN THE EVENT
INCAPACITATED,” ETC.

—“include,” in Act XLV of 1880, s. 381,
Expln.—

JAGANNADHA RAO *v.* KAMARAJU (1900)
[I. L. R., 24 Mad., 284]

—“information given to a Magistrate,”
in Act V of 1898, s. 250—

KING-EMPEROR *v.* THAMMAIA REDDI
(1901) . I. L. R., 25 Mad., 667

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JOWAHIR PATTAK v. PARNHOO AHIR
(1902)

[I. L. R., 30 Cal., 418;
s.c., 7 C. W. N., 116]

in Act XIV of 1882, s. 311—

SHOSI BIVSAN SADRU v. AHMED HOSSEIN
(1903) . . . 7 C. W. N., 439

—"inmates"—

See ante, "FOR THE BENEFIT OF THE
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—"inoperative"—

See ante, "BECOME USELESS AND INOPERATIVE."

—"inquiry", in Act I of 1894—

EMRA v. SECRETARY OF STATE (1902)

[I. L. R., 30 Cal., 36;
s.c., 7 C. W. N., 249]

—"instrument comprising or relating to
several distinct matters", in Act
I of 1879, s. 7—

REFERENCE UNDER STAMP ACT, s. 61 (f)
(1902)

[I. L. R., 28 Mad., 473]

—"instrument of mischief"—

THE TELANA (1901)

[I. L. R., 29 Cal., 402;
s.c., 6 C. W. N., 773]

—"instruments of gaming", in Ben. Act
II of 1887, s. 1—

AMRIT SINGH v. KING-EMPEROR (1901)

[5 C. W. N., 503]

—"insurance"—

See post, "POLICY OF SEA INSURANCE"

—"intangible thing", in Act IV of 1882,
s. 54—

RAMASAMI PATTAR v. CHINNAN ASAMI
(1901) . . . I. L. R., 24 Mad., 448

—"interest"—

See ante, "ANY PERSON HAVING ANY
INTEREST IN, OR CHARGE UPON, THE
PROPERTY."

See ante, "DEVOLUTION OF ANY INTEREST."

See post, "PROTECTED INTEREST."

See post, "RIGHT, TITLE AND INTEREST
OF THE DEBTORS"

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—"interest in the estate of the deceased,"
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(1901) . . . I. L. R., 28 Cal., 441

—"interested"—

See post, "PERSON INTERESTED."

—"interruption"—

See post, "WITHOUT INTERRUPTION."

—"intoxicating drug", in Bom. Act V of
1878, s. 3 (9)—

EMPEROR v. JAMSETJI CAWASJI CAMA
(1903) . . . I. L. R., 27 Bom., 551

—"involve some substantial question of
law", in Act XIV of 1882, s. 598—

BANKER LAL v. JAGAT NARAIN (1900)
[I. L. R., 23 All., 94]

—"irregularity", in Act V of 1898,
s. 587—

RAMAKRISHNA REDDI v. EMPEROR (1903)
[I. L. R., 28 Mad., 598]

—"issue"—

See ante, "IN ISSUE."

See ante, "IN WHICH THE RENT PAYABLE
BY THE TENANT HAS BEEN A MATTER
IN ISSUE."

—"istemrari mokurtari"—

See post, "MOCURHARI ISTEMRARI"

—"joint-creditors", in Act XV of 1887,
s. 8—

PERIASAMI v. KRISHNA AYYAN (s.c., 1902)
[I. L. R., 25 Mad., 431]

—"judgment"—

in Act XIV of 1882, s. 206—

RAKESHWAR PRASAD NARAIN SINGH v.
CHANDRISHWAR PRASAD NARAIN
SINGH (1903) . . . 7 C. W. N., 890

in Letters Patent, High Courts, 1885,
cl. 15—

APPASAMI PILLAI v. SOMASUNDRA
MUDALIAR (1902)

[I. L. R., 26 Mad., 437]

BRIS COOMAREN v. RAMICK DASS
(1901) . . . 5 C. W. N., 781

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SANSU (1900)

[I. L. R., 24 Mad., 252]

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KARJUNA PRASADA NAYADU (1901)

[I. L. R., 24 Mad., 358]

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[I. L. R., 29 Cal., 288;
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—"judgment"—concluded.

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cl. 15—concluded.

KUPPUSAMI CHETTI v. RATHNAVELU
CHETTI (1901)

[I. L. R., 24 Mad., 511]

NARAYANASAMI REDDI v. OSURU REDDI
(1901) . . . I. L. R., 25 Mad., 548

PUNINTHAVELU MUDALIAR v. BHASHTAM
ATTYANGAR (1901)

[I. L. R., 25 Mad., 406]

SABHAPATHI CHETTI v. NARAYANASAMI
CHETTI (1901)

[I. L. R., 25 Mad., 555]

SPHAGIRI ROW v. ASKUR JUNG APTAB
DOWLA (1902)

[I. L. R., 26 Mad., 502]

VIJASACHARY v. KESHAVACHARYA (1901)

[I. L. R., 25 Mad., 654]

in Mad. Act VIII of 1885, s. 69—

VENKATA PAPAYYA RAO v. VENKATA
SUBBAYYA (1901)

[I. L. R., 25 Mad., 453]

—"judgment-debtor"—

See post, "SAME JUDGMENT-DEBTOR."

—"judicial determination"—

SARIRAM AGARWALLA v. JIBU KAMAR
(1900) . . . 5 C. W. N., 254

—"judicial proceeding". in Act V of
1889, s. 476—

SANGHIA PILLAI v. DISTRICT
MAGISTRATE OF TRICHINOPOLY (1901)

[I. L. R., 25 Mad., 659]

—"jurisdiction"—

See ante, "COURT OF COMPETENT JURIS-
DICTION."

See ante, "EXERCISED A JURISDICTION
NOT VESTED IN IT BY LAW."

in Act XIV of 1892, s. 578—

MOHESH CHANDRA DAS v. JAMIRUDDIN
MOLLAR (1901)

[I. L. R., 28 Calc., 324;
s.c., 5 C. W. N., 509]

—"jury"—

See post, "WHERE THE TRIAL WAS BY
JURY."

—"justice"—

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JUSTICE."

—"kalmi"—

FAIRL SRIKER v. KIRAMUDDI SRIKER
(1902) . . . 6 C. W. N., 916

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—"kindred"—

See ante, "DISTANT KINDRED."

—"land"—

See ante, "CROPS OR OTHER PRODUCE OF
LAND."

See post, "SUITS FOR LAND OR OTHER
IMMOVABLE PROPERTY."

in Act X of 1859, s. 23 (4)—

ROOKE v. BENGAL COAL COMPANY, LTD.
(1901)

[I. L. R., 28 Calc., 485;
s.c., 5 C. W. N., 640]

in Act VII of 1870—

DURGA SINGH v. BISHWESHA DATAL
(1898) . . . I. L. R., 24 All., 218

in Ben. Act IX of 1879, s. 10—

MUKUND KOBRI v. DEPUTY COMMISSIONER
OF CHOTA NAGPUR (1902)

[I. L. R., 29 Calc., 638;
s.c., 7 C. W. N., 20]

—"landlord"—

See ante, "ANYTHING WHICH THE LAND-
LORD IS, UNDER THIS ACT, REQUIRED
OR AUTHORIZED TO DO."

—"law"—

See ante, "BOUND BY LAW TO PAY."

See ante, "EXERCISED A JURISDICTION
NOT VESTED IN IT BY LAW."

See ante, "IN ACCORDANCE WITH LAW."

See ante, "INVOLVE SOME SUBSTANTIAL
QUESTIONS OF LAW."

—"lawful"—

See ante, "AND IT SHALL BE ALSO LAW-
FUL."

—"lawful guardian", in Act XLV of 1880,
s. 361, Expln.—

JAGANNADHA RAO v. KAMARAJU (1900)

[I. L. R., 24 Mad., 284]

—"lawfully engaged", in Act XLV of
1880, s. 296—

VIJAYARAGHAVA CHARARIAR v. EMPEROR
(F.R., 1903) I. L. R., 28 Mad., 554

—"lease"—

See post, "MULGENT LEASE."

See post, "THE SUB-LEASE SHALL NOT BE
VALID."

—"like"—

See post, "OPEN SQUARE OR THE LIKE"

See post, "OR THE LIKE."

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—lower class—

See ante, "BUT OF A LOWER CLASS,"

—Magistrate—

See ante, "INFORMATION GIVEN TO A MAGISTRATE."

—"malice"—

BRIM SEN & SITA RAM (1902)
[I. L. R., 24 All., 363]

—mark—

See post, "TRADE-MARK."

—marriage—

See ante, "BREACH OF PROMISE OF MARRIAGE."

—"materials", in Mad. Act I of 1886, s. 55 (g)—

QUEEN-EMPRESS v. GANGAYTA (1901)
[I. L. R., 24 Mad., 417]

—"materially alter the structure of any house", in Ben. Act II of 1888, s. 238—

KESRUB CHANDRA SEN v. CALCUTTA MUNICIPAL CORPORATION (1902)
[7 C. W. N., 374]

—"may commit", in Act V of 1898, s. 477—

REILY v. KING-EMPEROR (1901)
[I. L. R., 28 Calc., 434;
s.c., 5 C. W. N., 609]

—means of subsistence—

See post, "OSTENSIBLE MEANS OF SUBSISTENCE."

—"medicated article", in Bom. Act V of 1878, s. 62—

EMPEROR v. JAMSETJI COWASHI CAMA (1903) . . I. L. R., 27 Bom., 551

—member—

See ante, "DEPENDENT MEMBER."

—"member of the village community" in Act XVIII of 1878, s. 9, cl. 3rd—

DRIS BHAJ SINGH & DEPUTY COMMISSIONER OF GONDA (F. B., 1902)
[I. L. R., 24 All., 420]

—"mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him", in Act IX of 1873, s. 137—

RANJIT SINGH & NAURAT (1902)
[I. L. R., 24 All., 504]

—"mesne profits"—

NARPAT SINGH v. HAR GAYAN (1903)
[I. L. R., 25 All., 275]

WORDS—continued.

—mischief—

See ante, "INSTRUMENT OF MISCHIEF."

—"misconduct", in Act XIV of 1883, s. 521—

KALI CHARAN SIRDAR & SARAT CHEN-
DER CHOWDERY (1903)
[I. L. R., 30 Calc., 397;
s.c., 7 C. W. N., 545]

—mistake—

See ante, "FRAUD, SURPRISE OR MISTAKE."

—"mukurrari istemrari"—

AGIN BINDER UPADHYA & MOHAN BIKRAM
& SHAH (1902)

[I. L. R., 30 Calc., 30;
s.c., 7 C. W. N., 314]

NARASINGH DYAL SAHU & RAM NARAIN
SINGH (1903)

[I. L. R., 30 Calc., 889]

—mortgage—

See ante, "ENGLISH MORTGAGE."

See post, "SPECIFICALLY MORTGAGED."

—"movable and immovable property of a defaulter", in Mad. Act II of 1884, s. 5—

NARAYANA RAJA & RAMACHANDRA RAJA
(1902) . . I. L. R., 28 Mad., 521

—"movable property"—

in Act XV of 1877, Sch. II, Art. 89—

ASGHAR ALI KHAN & KHURSHID ALI
KHAN (1901) . . I. L. R., 24 All., 27;
s.c., I. L. R., 28 I. A., 227

in Act XIV of 1883, s. 288—

TARVADI BHOLANATH HARISHANKER & BAI
KASHI (1901) . . I. L. R., 28 Bom., 305

—"mulgené lease"—

NARAYAN MANJATA & RAMCHANDRA
DEVASTHAN (1903)
[I. L. R., 27 Bom., 373]

—"nadarat"—

ALI NASIR KHAN & MANIK CHAUD
(F. B., 1902) . . I. L. R., 25 All., 90

—"no power to alienate", in Act I of 1894, s. 32—

MAHAMMAD ALI RAJA AYERGAL & AHAM-
MED ALI RAJA AYERGAL (F. B., 1902)
[I. L. R., 28 Mad., 287]

—notice—

See post, "THE DATE OF ISSUING A NOTICE."

WORDS—continued.

—"o putra pautradī"—

GOOROO DAS MUSTAFI v. SARAT CHUNDER
MUSTAFI (1902)

[I. L. R., 29 Calc., 699;
a.c., 5 C. W. N., 721]

—"occasioned a failure of justice", in Act
V of 1898, s. 537—

KING-EMPEROR v. TIRUMAL REDDI
(1901) [I. L. R., 24 Mad., 523]

—occasions—

See ante, "AND IT SHALL BE ALSO LAW-
FUL FOR THE COURT, ON THOSE OR
ANY OTHER OCCASIONS"

—"occupants"—

CHOUDEBI MAKRUL HUSAIN v. LALTA
PRASAD (1901)

[I. L. R., 28 I. A., 169;
a.c., I. L. R., 24 All., 1]

—offence—

See ante, "ANY SUCH OFFENCE."

in Act V of 1898, s. 4 (o)—

ADAMS v. EMPEROR (1903)
[I. L. R., 28 Mad., 607]

—"offences", in Act XXV of 1879, s. 6—

ADAMS v. EMPEROR (1903)
[I. L. R., 28 Mad., 607]

—"offences involving a breach of the
peace", in Act V of 1898, s. 110 (c)—

ARUN SAMANTA v. EMPEROR (1902)
[I. L. R., 30 Calc., 386]

—offer for sale—

See post, "SELLS OR OFFERS FOR SALE."

—"officer in charge of a police-station"
in Act V of 1898, s. 4 (i) (p)—

SOLICITOR TO THE GOVERNMENT OF INDIA
v. MADHO DROBI (1903)
[7 C. W. N., 661]

—"omission", in Act V of 1898, s. 537—

RAMAKRISHNA REDDI v. EMPEROR (1903)
[I. L. R., 28 Mad., 598]

—only—

See ante, "HAVING ONLY AN IMPERFECT
TITLE."

—"open square or the like", in Ben. Act
III of 1899, Sch. XVII, rule 34—

NOVI LAL SETH v. CORPORATION OF
CALCUTTA (1903) [7 C. W. N., 853]

—option—

See post, "SHIPMENT AT SELLER'S OP-
TION."

WORDS—continued.

—"or the like", in Act X of 1859, s. 23
(d)—

ROOKE v. BENGAL COAL COMPANY, LTD.
(1901) [I. L. R., 28 Calc., 485;
a.c., 5 C. W. N., 480]

—order—

See post, "PARTY AGAINST WHOM AN
ORDER IS PASSED."

in Act X of 1897, s. 24—

PADAN SAMA v. EMPEROR (1903)
[7 C. W. N., 638]

—"order granting a certificate", in Act
VII of 1889, s. 18—

VENKATESWARLU v. BRAHMADEVU
RAJA KRISHNAJI (1901)
[I. L. R., 25 Mad., 634]

—"order him to be committed for trial,"
in Act V of 1898, s. 486—

QUEEN-EMRESS v. SURENDRA NATH
SARKAR (1901)
[5 C. W. N., 574;
a.c., I. L. R., 28 Calc., 397]

—"order made on appeal"—

SUNDER KOER v. CHANDISHWAR PRASAD
SINGH (1903)
[I. L. R., 30 Calc., 679]

—ordinarily—

See ante, "COURT TO WHICH APPEALS
ORDINARILY LIE."

—"ostensible means of subsistence", in
Act V of 1898, s. 109 (b)—

QUEEN-EMRESS v. POORAN AGARWALLA
(1900) [5 C. W. N., 128]

—other—

See ante, "CROPS OR OTHER PRODUCE
OF LAND."

See ante, "FRAUD, SURPRISE OR MISTAKE
OR SUCH OTHER SPECIAL GROUND."

—"other reasonable cause"—

See ante, "ANY OTHER REASONABLE
CAUSE."

in Act XVIII of 1879, s. III (f)—

IN THE MATTER OF A PLEADER (1902)
[I. L. R., 28 Mad., 448]

—"otherwise", in Act XIV of 1893,
s. 600—

HANARASI PRASAD v. KASHI KRISHN
NARAIN (1900)

[5 C. W. N., 193;
a.c., I. L. R., 28 I. A., 11;
I. L. R., 23 All., 227]

WORDS—continued

—owner—

See post, "THE PURCHASER SHALL NOT ACQUIRE OWNERS"

in Ben. Act III of 1888, s. 3 (32)—

PINK v. CORPORATION OF CALCUTTA
(1903) . I. L. R., 30 Calc., 731;
s.c. 7 C. W. N., 706

—paid—

See post, "SUM HE HAS RIGHTLY PAID UNDER THE GUARANTEE"

See post, "THE AREA FOR WHICH RENT HAS BEEN PREVIOUSLY PAID."

in Act XV of 1877, Sch. II,
Arts. 61, 69—

RAJAH OF VIZIANAGRAM v. SETTUCHERLA
SOMASEKHARAS (F.B., 1903)
[I. L. R., 26 Mad., 686]

—"parjyapta hatbek"—

HARRISS v. BROWN (1901)

[I. L. R., 28 Calc., 621;
s.c., 5 C. W. N., 729;
I. R., 28 I. A., 159]

—"parties concerned in such dispute",
in Act V of 1888, s. 145 (1)—

KRISHNA KAKINI v. ABDUL JUBBAR
(F.B., 1902) I. L. R., 30 Calc., 155;
s.c., 6 C. W. N., 737

—"parties to the suit", in Act XIV of
1882, s. 244 (c)—

KAKIMUDDIN SARKAR v. LALL MEAR
(1902) . . . 6 C. W. N., 737;
s.c., I. L. R., 29 Calc., 686

—party—

See ante, "ALL PROCEEDINGS UNDER THIS ACT BETWEEN PARTY AND PARTY."

See ante, "ALL THE PARTIES TO A SUIT"

—"party against whom an order is
passed", in Act XIV of 1882, s. 283—

MOLINI KUTTI v. KUNHI KUTTI ALI
(1902) . . . I. L. R., 25 Mad., 721

—pay—

See ante, "BOUND BY LAW TO PAY."

—payment—

See ante, "DATE OF PAYMENT."

See ante, "FOR PAYMENT TO THE DECREE-HOLDER."

—peace—

See ante, "OFFENCES INVOLVING A BREACH OF THE PEACE."

WORDS—continued.

—pension—

See post, "POLITICAL PENSIONS."

—"person aggrieved", in Act V of 1888,
s. 198—

BEAUCHAMPT v. MOORE (1902)
[I. L. R., 26 Mad., 43]

EMPEROR v. IMTIAZAN (1902)
[I. L. R., 25 All., 132]

—"person entitled to institute a suit or
make an application", in Act XV of
1877, s. 7—

PERIASAMI v. KRISHNA ATTAN (F.B., 1902)
[I. L. R., 25 Mad., 431]

—"person interested", in Act I of 1894,
s. 23—

NARAIN CHANDRA BORAL v. SECRETARY
OF STATE FOR INDIA IN COUNCIL
(1900) . . . I. L. R., 28 Calc., 152;
s.c., 5 C. W. N., 349

—"person whose immovable property
has been sold", in Act XIV of 1882,
s. 310A—

MALLIKARJUNADU SETTI v. LINGA
MURTI PANTULU (1902)
[I. L. R., 26 Mad., 332]

PARESH NATH SINGHA v. NAROGOPAL
CHATTOPADHYAYA (F.B., 1901)
[I. L. R., 28 Calc., 1;
s.c., 5 C. W. N., 821]

—"physical possession", in Act XV of
1877, Sch. II, Art. 10—

BATUL BEGAN v. MANSHUR ALI KHAN
(1901) . . . I. L. R., 24 All., 17;
s.c., I. L. R., 28 I. A., 248;
5 C. W. N., 888

—"place to which the public have
access"—

CAWASJI MERWASHI SHROFF v. GREAT
INDIAN PENINSULA RAILWAY COMPANY
(1902) . . . I. L. R., 26 Bom., 609

—police-force—

See post, "RENDERING SUCH FORCE EFFICIENT
IN THE DISCHARGE OF ALL ITS
DUTIES"

—police-station—

See ante, "OFFICER IN CHARGE OF A
POLICE-STATION"

—"policy of sea-insurance", in Act II of
1889, Sch. I, Art. 47, cl. A—

IN THE MATTER OF A REFERENCE UNDER
THE INDIAN STAMP ACT, 1829 (1903)—
[I. L. R., 30 Calc., 565]

WORDS—continued.

—“political pensions”, in Act XIV of 1882, s. 268 (g)—

MUTHUSAMI NAIDU v. ALAGIA MANAVALA
SINGIALA RAJA (1903)

[I. L. R., 26 Mad., 423]

—possession—

See ante, “ACTUAL POSSESSION.”

See ante, “PHYSICAL POSSESSION.”

in Act XV of 1877, s. 28—

LALLA KANDOO LAL v. MANKI BIRI
(1902) . . . 6 C. W. N., 601

in Act XIV of 1882, s. 331—

MANCHARAM v. FAKIRCHAND (1901)

[I. L. R., 25 Bom., 476]

—power—

See ante, “NO POWER TO ALIENATE.”

—prejudice—

See post, “TO THE PREJUDICE OF THE
PURCHASER.”

—“prevented by any sufficient cause”, in
Act XIV of 1882, ss. 103, 108, 558—

SOMAYYA v. SUBRAMMA (1903)

[I. L. R., 26 Mad., 599]

—“prior to the realisation”, in Act XIV
of 1882, s. 295—

RAMANATHAN CHETTIAR v. SUBRAMANJA
SASTRIAL (1902)

[I. L. R., 26 Mad., 179]

—probable cause—

See post, “REASONABLE AND PROBABLE
CAUSE.”

—proceeding—

See ante, “JUDICIAL PROCEEDING.”

in Act XV of 1877, s. 14—

JAFAR v. KAMALINI DEBI (1900)

[5 C. W. N., 150;
s.c., 28 Calc., 438]

—proceedings—

See ante, “ALL PROCEEDINGS UNDER THIS
ACT BETWEEN PARTY AND PARTY.”

in Madras Act VIII of 1865, s. 80—

DHARMAKARTHA OF TIRANORE TEMPLE v.
LUCHIMI DOSS (P.B. 1903)

[I. L. R., 26 Mad., 589]

—produce—

See ante, “CROPS OR OTHER PRODUCE
OF LAND.”

—profits—

See ante, “MISSE PROFITS.”

WORDS—continued.

—promise—

See ante, “BREACH OF PROMISE OF
MARRIAGE”

—property—

See ante, “IMMOVABLE PROPERTY.”

See ante, “MOVABLE AND IMMOVABLE
PROPERTY.”

See ante, “MOVABLE PROPERTY.”

See post, “SALEABLE PROPERTY.”

in Act VII of 1870, Sch. I, Art. 11—

IN RE LAESHMINATHAYANA AKMAL
(1902) . . . I. L. R., 25 Mad., 515

—“proprietor”, in Act V of 1888, s. 51—

BAHAL RAI v. SUMER CHAND (1903)
[I. L. R., 25 All., 483]

—“prosecuting with due diligence”, in
Act XV of 1877, s. 14—

DASEATH RAI v. BHETROU RAI CHANDAY
(1901) . . . I. L. R., 23 All., 484

—“prosecutions”, in Ben. Act IV of 1886,
s. 49 (1)—

BHOYENDRA LAL MITTER v. EMPEROR
(1903) . . . 7 C. W. N., 883

—“protected interest”, in Act VIII of
1885, s. 160—

AKHOY KUMAR SOOR v. DEVOY CHAND
MOHATAF (1902)

[I. L. R., 29 Calc., 813]

—public—

See ante, “PLACE TO WHICH THE PUBLIC
HAVE ACCESS.”

—“public purpose”, in Act I of 1894—

EXRA v. SECRETARY OF STATE (1902)
[I. L. R., 30 Calc., 38;
s.c., 1 C. W. N., 249]

—“public servant”, in Act XLV of 1860,
s. 21—

NAZAMUDDIN v. QUEEN-EMPRESS (1900)
[I. L. R., 28 Calc., 314]

—“public street”—

ANKLESVAR MUNICIPALITY v. RIKHAY-
CHAND KAPUSCHAND (1900)

[I. L. R., 25 Bom., 315]

—“publication”—

BAHAL RAI v. SUMER CHAND (1903)
[I. L. R., 25 All., 483]

—punishment—

See post, “SHALL BE OF ANY OF THE
LOWER CASTES OF THE PEOPLE OF
WHOM IT MAY NOT BE IMPROPER TO
INFLECT SO DEGRADING A PUNISHMENT.”

WORDS—continued.

—“purchased”, in Act XV of 1877, Sch. II, Art. 134—

MANAVIKRAMAN PITTAN THAMBURAN v.
AIRUDU (72, 1901)
[I. L. R., 24 Mad., 471]

—purchaser—

See post, “THE PURCHASER SHALL NOT
ACQUIRE, ETC.”

See post, “TO THE PREJUDICE OF THE
PURCHASER.”

—purpose—

See ante, “FOR THE PURPOSE OF CROSS
EXAMINATION.”

See ante, “PUBLIC PURPOSE.”

See post, “SOLELY FOR AGRICULTURAL
PURPOSES.”

—question of law—

See ante, “INVOLVE SOME SUBSTANTIAL
QUESTION OF LAW.”

—realisation—

See ante, “PRIOR TO THE REALISATION.”

—“reasonable and probable cause”—

DEVI SEN v. SITA RAM (1902)
[I. L. R., 24 All., 368]

—reasonable cause—

See ante, “ANY OTHER REASONABLE
CAUSE.”

See ante, “OTHER REASONABLE CAUSE.”

—“reclaim”—

SHAMRAO PANDURANG v. SECRETARY OF
STATE FOR INDIA (1900)
[I. L. R., 26 Bom., 32]

—registered—

See ante, “CONTRACT IN WRITING,
REGISTERED.”

—“relative”, in Act X of 1865, s. 105—

ADMINISTRATOR-GENERAL OF MADRAS v.
SIMPSON (1902)
[I. L. R., 26 Mad., 532]

—remedy—

See ante, “MERE FORFEITURE
TO ENFORCE ANY OTHER REMEDY,” ETC.

—removal—

See ante, “IN THE EVENT OF THE DEATH,
RESIGNATION, REMOVAL,” ETC.

—“rendering such force (i.e., the police
force) efficient in the discharge of all
its duties”, in Ben. Act IV of 1866,
s. 9—

BJOYESDRA LAL MITTER v. EMPEROR
(1903) . . . 7 C. W. N., 883

WORDS—continued.

—rent—

See ante, “ABATEMENT OF RENT.”

See ante, “IN WHICH THE RENT PAYABLE
BY THE TENANT HAS BEEN A MATTER
IN ISSUE.”

See post, “THE AREA FOR WHICH RENT
HAS BEEN PREVIOUSLY PAID.”

in Bom. Act V of 1879—

SADASHIV v. RAMKRISHNA (1901)
[I. L. R., 25 Bom., 558]

—“report”, in Act V of 1898, s. 4 (h)—

KING-EMPEROR v. SADA (1901)
[I. L. R., 28 Bom., 150]

—required—

See ante, “ANYTHING WHICH THE LAND-
LORD IS, UNDER THIS ACT, REQUIRED
OR AUTHORISED TO DO.”

—reservations—

See ante, “ALL STIPULATIONS AND
RESERVATIONS.”

—resignation—

See ante, “IN THE EVENT OF THE DEATH,
RESIGNATION,” ETC.

—“reverse the finding and sentence”, in
Act V of 1898, s. 423 (f) (b)—

SAMI AYTA v. EMPEROR (1902)
[I. L. R., 28 Mad., 478]

—“revivor”, in Act XV of 1877, Sch. II,
Art. 180—

MONOHAR DAS v. FUTTER CHAND (1903)
[I. L. R., 30 Calc., 879;
a.c., 7 C. W. N., 793]

—right—

See ante, “ANY DISPUTE SHALL ARISE
RESPECTING THE RIGHT OF SUCCESSION.”

See post, “THE PURCHASER SHALL NOT
ACQUIRE ANY RIGHTS,” ETC.

—“right, title and interest of the
debtors”—

AKHAR KUMAR SOOB v. BHOY CHAND
MOHATAP (1902)
[I. L. R., 29 Calc., 613]

—rightly paid—

See post, “SUM HE HAS RIGHTLY PAID
UNDER THE GUARANTEE.”

—sale—

See ante, “DATE OF SALE.”

See post, “BILLS OF OFFER.”

WORDS—continued.

—sale—concluded.

in Act VII of 1870, s. 34—

KEDAR NATH SARKAR v. EMPEROR (1903)
[I. L. R., 30 Calc., 921;
a.c., 7 C. W. N., 704]

—“saleable property”, in Act XIV of 1882, s. 208—

BROHOJANUND OJHA v. PEARLY CHARAN
DER (1903). I. L. R., 29 Calc., 470,
a.c., 6 C. W. N., 728

—“same judgment-debtor”, in Act XIV of 1882, s. 205—

RAMANATHAN CHETTIAR v. SUBRAMANIAM
SATHIAL (1903).
[I. L. R., 26 Mad., 179]

—“same transaction”, in Act V of 1888, s. 135—

CHENNETTY v. EMPEROR (1902)
[I. L. R., 26 Mad., 454]

—satisfaction—

See ante, “EXECUTION OR SATISFACTION OF THE DECREE.”

—sea-insurance—

See ante, “POLICY OF SEA INSURANCE”

—seller's option—

See post, “SHIPMENT AT SELLER'S OPTION.”

—“sells or offers for sale”, in Act VII of 1870, s. 34, and Act II of 1899, s. 69—

QUEEN-EMPEROR v. VIRASAMI (1900)
[I. L. R., 24 Mad., 319]

—sentence—

See ante, “ENHANCE THE SENTENCE.”

See ante, “REVERSE THE FINDING AND SENTENCE”

—servant—

See ante, “FIDELIO SERVANT”

—“settlement of the assessment”, in Bom. Act II of 1878, s. 9—

VINAYAK ATNANAM v. COLLECTOR OF
BOMBAY (1901)
[I. L. R., 28 Bom., 338]

—“several distinct matters”—

See ante, “INSTRUMENT COMPRISING OR RELATING TO SEVERAL DISTINCT MATTERS”

in Act II of 1899, s. 5—

REFERENCE UNDER STAMPS ACT, SECTION
57 (1901). I. L. R., 25 Mad., 3

—“shall add to any existing embankment”, in Ben. Act II of 1882, s. 78 (a)—

ARODHYA NATH KOILA v. RAJ KRISHNTO
BHAR (v.r., 1902)
[I. L. R., 30 Calc., 481;
a.c., 7 C. W. N., 284]

WORDS—continued.

—“shall be of any of the lower castes of the people on whom it may not be improper to inflict so degrading a punishment”, in Mad. Reg. XI of 1818, s. 10 (1)—

RATTIGADU v. KONDA REDDI (1807)
[I. L. R., 24 Mad., 271]

—shikmi—

See ante, “HISSADARAN SHIKMI.”

—ship—

See ante, “BY A SHIP.”

—“shipment at seller's option during August-September—

MACKENICK v. NORO COOMAR BAY
(1903). I. L. R., 30 Calc., 477;
a.c., 7 C. W. N., 431

—“shopkeeper”, in Mad. Act IV of 1884, Sch. A—

MUNICIPAL COUNCIL OF MANGALORE v.
SECRETARY OF STATE FOR INDIA IN
COUNCIL (1902)
[I. L. R., 25 Mad., 747]

—sold—

See ante, “ANY PERSON WHOSE IMMOVABLE PROPERTY HAS BEEN SOLD.”

See ante, “PERSON WHOSE IMMOVABLE PROPERTY HAS BEEN SOLD.”

—“solely for agricultural purposes”, in Mad. Act IV of 1884, s. 63 (3)—

KING-EMPEROR v. ALLAN
[I. L. R., 25 Mad., 627]

—“some interest in”, in Act XIV of 1882, s. 279—

SADHARATHI CHETTI v. NARAYANASAMI
CHETTI (1901)
[I. L. R., 25 Mad., 555]

—son—

See ante, “ELDEST SON TO BE BORN.”

—“special ground”—

ROYAL INSURANCE COMPANY v. AUKHOT
COOMAR DUTT (1901)
[I. L. R., 28 Calc., 272;
a.c., 5 C. W. N., 337]

See also ante, “FRAUD, SURPRISE OR MISTAKE, OR SUCH OTHER SPECIAL GROUND.”

—“specifically mortgaged”, in Act XVII of 1879, s. 22—

RAISHET v. HIRONDO RAMKRISHNA (1901)
[I. L. R., 26 Bom., 33]

—square—

See ante, “OPEN SQUARE OR THE LIKE.”

WORDS—continued

—“stamp of improper description,” in Act II of 1889, s. 57, and Rule 18 of the Rules thereunder dated 17th February, 1889—

REFERENCE UNDER SECTION 57 OF ACT II OF 1892 (S.E. 1-01)

[I. L. R. 23 All. 213]

—“stamped at the time of execution,” in Act I of 1878, s. 17—

STAMP MULL v. HUNSON (1900)

[I. L. R. 21 Mad. 239]

—stipulations—

See ante, “ALL STIPULATIONS AND RESERVATIONS.”

—street—

See ante, “PUBLIC STREET.”

—structure—

See ante, “MATERIALLY ALTER THE STRUCTURE OF ANY HOUSE.”

—sub-lease—

See post, “THE SUB-LEASE SHALL NOT BE VALID.”

—“subject of dispute,” in Act V of 1888, ss. 145 and 146—

SARAI ALI v. ABDUL KAKIR (1901)

[5 C. W. N. 710]

—subjects in dispute—

See post, “THE SUBJECTS IN DISPUTE.”

—Subordinate Judge—

See ante, “IN THE EVENT OF THE DEATH OF A SUBORDINATE JUDGE,” ETC.

—subsistence—

See ante, “OSTENSIBLE MEANS OF SUBSISTENCE.”

—substantial question of law—

See ante, “INVOLVE SOME SUBSTANTIAL QUESTION OF LAW.”

—succession—

See ante, “ANY DISPUTE SHALL ARISE RESPECTING THE RIGHT OF SUCCESSION.”

—“successively”—

GOPAL CHANDER BOSE v. KARTICK CHANDER DAI (P.C. 1902)

[I. L. R. 29 Calc. 716]

—such—

See ante, “ANY SUCH OFFENCE.”

See ante, “FRAUD, SURPRISE OR MISTAKE, OR SUCH OTHER SPECIAL GROUND.”

WORDS—continued

—“such thing to be done,” in Act V of 1888, s. 147—

PASTAPATI NATH ROSE v. NAYUD LAL ROSE (1900) . . . 5 C. W. N. 67

—sufficient cause—

See ante, “PREVENTED BY ANY SUFFICIENT CAUSE.”

in Act XV of 1877, s. 5—

KUNHIAPPA NAIDAR v. RAMAKRISHNA PHILLAI (1901)

[I. L. R. 25 Mad. 169]

RAM NARAIN JONES v. PARNESWAR NARAIN MATHA (1-02)

[I. L. R. 30 I. A. 230]

s.c. [I. L. R. 30 Calc. 339]

—“sufficient grounds for committing,” in Act V of 1888, s. 202—

EXTENDER v. VANTANDAS (1902)

[I. L. R. 27 Bom. 84]

—suit—

See ante, “ALL THE PARTIES TO A SUIT.”

See ante, “IF A SUIT BE ADJUSTED.”

See ante, “PARTIES TO THE SUIT.”

See ante, “PERSON ENTITLED TO INSTITUTE A SUIT OR MAKE AN APPLICATION.”

See post, “THE VALUE OF THE ORIGINAL SUIT.”

—“suit relating to a trust,” in Act IX of 1887, Sch. II, Art. (18)—

STYRABALINGHAM CHETTI v. MARUTAPPA CHETTI (1901)

[I. L. R. 28 Mad. 200]

—“suits for land or other immovable property,” in Letters Patent, High Courts, 1885—

HARA LALL RAYCHAND v. NITAKHUTI DEBI (1901) . . . I. L. R. 29 Calc. 313

—“sum he has rightly paid under the guarantee,” in Act IX of 1872, s. 145—

PETTI NARAYANACHETTI ATTAR v. MARAKHUTH PHILLAI (1902)

[I. L. R. 28 Mad. 322]

—surprise—

See ante, “FRAUD, SURPRISE OR MISTAKE.”

—“talsukdar,” in Bom. Act VI of 1888, s. 2 (a)—

NARAYANAS PARNESUDAS v. PARNESOTTAM VAIT (1902)

[I. L. R. 28 Bom. 737]

WORDS—continued.

- “the area for which rent has been previously paid”, in Act VIII of 1885, s. 52 (1) (a)—

RAJENDRA LAL GOSWAMI v. CRUNDER
DHUSAN GOSWAMI (1901)
[8 C. W. N., 318]

- “the date of issuing a notice”, in Act XV of 1877, Sch. II, Art. 179—

KADARESSUR SEN BHOW v. MOHIM
CHANDRA CHAKRAVARTI (1902)
[6 C. W. N., 658]

- “the purchaser shall not acquire any rights which were not possessed by the previous owner or owners”, in Act XI of 1859, s. 54—

ANKODA PROSAD GHOSE v. RAJENDRA
KUMAR GHOSH (1901)
[I. L. R., 29 Calc., 223;
s.c., 6 C. W. N., 375]

- “the subjects in dispute”, in Act XIV of 1882, s. 42—

RAMASWAMI AYYAR v. VITHINATHA
AYYAR (1903)
[I. L. R., 26 Mad., 780]

- “the sub-lease shall not be valid”, in Act VIII of 1885, s. 85 (3)—

MADAN CHANDRA KAPALI v. JAXI
KARIKAR (1902) . 6 C. W. N., 377

- “the value of the original suit”, in Act XII of 1887, s. 21 (a)—

SHRO SINGH v. BALDEO SINGH (1903)
[I. L. R., 25 All., 277]

- therein—

See ante, “FOUND THEREIN.”

- thing—

See ante, “INTANGIBLE THING”

See ante, “SUCH THING TO BE DONE.”

- time of execution—

See ante, “STAMPED AT THE TIME OF
EXECUTION.”

- title—

See ante, “HAVING ONLY AN IMPERFECT
TITLE.”

See ante, “RIGHT, TITLE AND INTEREST
OF THE DEBTORS.”

- to be born—

See ante, “ELDEST SON TO BE BORN.”

- “to the prejudice of the purchaser”, in Ben Act III of 1889, s. 495—

MOH LAL PAL v. CORPORATION OF
CALCUTTA (1903)
[I. L. R., 30 Calc., 643;
s.c., 7 C. W. N., 637]

WORDS—continued.

- “trade-mark”, in Act XLV of 1880, s. 478—

RADHA KRISHNA JOSHI v. KINSONLAL
SHEIDHAR (1901)
[I. L. R., 26 Bom., 289]

- “trader”, in Mad. Act IV of 1884, Sch. A—

MUNICIPAL COUNCIL OF MANGALORE v.
SECRETARY OF STATE FOR INDIA IN
COUNCIL (1902)
[I. L. R., 25 Mad., 747]

- transaction—

See ante, “SAME TRANSACTION.”

- trial—

See ante, “ORDER HIM TO BE COMMIT-
TED FOR TRIAL.”

See post, “WHERE THE TRIAL WAS BY
JURY.”

- trust—

See ante, “SUIT RELATING TO A TRUST.”

See post, “WHENEVER THE DIRECTION OF
THE COURT IS DEEMED NECESSARY FOR
THE ADMINISTRATION OF SUCH TRUST.”

- useless—

See ante, “BECOME USELESS AND IN-
OPERATIVE.”

- valid—

See ante, “THE SUB-LEASE SHALL NOT BE
VALID.”

- value—

See ante, “THE VALUE OF THE ORIGINAL
SUIT.”

- “vexatious”, in Act V of 1886, s. 250—

BEVI MADHUS KURMI v. KUMUD KUMAR
BISWAS (1902)
[I. L. R., 30 Calc., 123;
s.c., 6 C. W. N., 789]

- Village community—

See ante, “MEMBER OF THE VILLAGE
COMMUNITY.”

- in Act XII of 1878—

RAHIMUDDIN v. REWAZ (1903)
[I. L. R., 30 Calc., 635;
s.c., 7 C. W. N., 498;
I. R., 30 I. A. 89]

- wager—

See ante, “BY WAY OF WAGER.”

- “wash”—

QUEEN-EXPRESS v. GANGAYTA (1901)
[I. L. R., 24 Mad., 417]

WORDS—*concluded*

—“whenever the direction of the Court is deemed necessary for the administration of such trust”, in Act XIV of 1882, s. 539—

NETI RAMA JOGIAN v VENKATA CHARULU (1902). I. L. R., 26 Mad., 450

—“where the trial was by jury”, in Act V of 1888, s. 418—

KING-EMPEROR v PARBHUSHANKAR (F. B., 1901). I. L. R., 25 Bom., 680

—“with the distrainer”—

VIRABAGHAVA AYYANGAR v KANAGAVALLI AMMAL (1901)

[I. L. R., 25 Mad., 503]

—“without interruption”, in Act IV of 1882, s. 108 (c)—

TATANA v GUESKIDAPPA (1900)

[I. L. R., 25 Bom., 269]

—writing—

See *ante*, “CONTRACT IN WRITING, REGISTERED.”

—wrong—

See *ante*, “CONTINUING WRONG.”

—year—

See *ante*, “CURRENT YEAR.”

WRITTEN STATEMENT.

—absence of evidence in support of—

See EASEMENT. [I. L. R., 30 Calc., 918]

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION

[5 C. W. N., 71]

—denial of title in—

See CO-SHARER—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY. [I. L. R., 28 Calc., 223]

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE

[I. L. R., 28 Calc., 135]

—presumption from non-denial in, of allegation made against defendant—

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY. I. L. R., 26 Bom., 735

—treated as an acknowledgment—

See LIMITATION ACT, 1877, s. 19—ACKNOWLEDGMENT OF DEBTS.

[I. L. R., 24 Mad., 361]

WRONG-DOERS.

See CONTRIBUTION, SUIT FOR—JOINT WRONG-DOERS.

WRONGFUL CONFINEMENT.

—Prisoner in jail—Confinement, illegal, in cell—Penal Code (Act XLV of 1860), ss. 79, 114 and 342.—If a prisoner is confined in a particular part of a prison without legal authority, that confinement is a wrongful one, notwithstanding that his confinement in the prison at large may be legal. RAJSTAR CHARAN SHAHA v EMPEROR (1903)

[I. L. R., 30 Calc., 95; a.c., 6 C. W. N., 511]

WRONGFUL DISTRAINT.

See BENGAL TENANCY ACT, ss. 121, 122, 140. I. L. R., 28 Calc., 364

See LIMITATION ACT, 1877, SEC. II, ART. 28. 7 C. W. N., 728

See MADRAS RENT RECOVERY ACT, s. 20 [I. L. R., 28 Mad., 183]

See SMALL CAUSE COURT, MUFUSSIL—JURISDICTION—WRONGFUL DISTRAINT.

WRONGFUL GAIN OR LOSS.

See CRIMINAL BREACH OF TRUST. [6 C. W. N., 203]

WRONGFUL LOSS.

See FORGERY. 5 C. W. N., 897
See WRONGFUL GAIN OR LOSS.

WRONGFUL RESTRAINT.

1.—Indian Penal Code (Act XLV of 1860), ss. 143, 341.—Erecting a fence over a way—Obstruction to public pathway—Decree of Civil Court—Maps and plans depicting way—Unlawful assembly—Magistrate, duty of, to maintain decrees of Civil Court—Rule, enlargement of, at the

CHAKRAVARTY (1900). 5 C. W. N., 215

2.—Criminal Procedure Code (Act V of 1893), s. 423.—Right of way, interference with—Order for preserving status quo ante on conviction, if proper—Appellate Court, power of, to set aside such order—Penal Code (Act XLV of 1860), s. 341.—Where a person blocked up a private way, along which the complainant had a right to go, by raising

WRONGFUL RESTRAINT—concluded.

a wall, and was convicted of the offence of wrongful restraint under s 341 of the Penal Code, and an order was passed by the District Magistrate, Bangalore.

Also, that, although an Appellate Court has, under

proceeding infructuous the absurd. Also, that the

Y**YOUTHFUL OFFENDER.**

See REFORMATORY SCHOOLS ACT (VIII OF 1897).

Z**ZAMINDAR, RIGHTS OF.**

See PATENT TENURE.

[I. L. R., 28 Calc., 744

—Landholder and tenant—Sale of house by tenant—*Hag-i-chaharum* by whom payable—In the case of a customary right to receive *hag-i-chaharum*, where it does not appear that the zamindar's right to

ZAMINDARI DAKS.

—Cess—*Dak cess*—Zamindari *dak*, maintenance of—Ben Reg. XX of 1817, s. 10—Ben Act VIII of 1862—Contract between zamindar and patnidar as to payment of *dak charges*—Liability of patnidar to pay *dak charges*—Construction of patni lease—In a *patni-kabuliyat* exte-

ZAMINDARI DAKS—concluded.

nted in 1855, the patnidar stipulated to pay the salary and expense of *amlas* of *dak chaul*, houses, and to appoint them and superintend their work, under the system of

changes, the necessity of paying such charges be taken to exist. *Sardar Soondary Debba v Wooma Churn Sircar* (1865), 3 W. R., S. C. C. Ref., 17, followed. *JILLAR RAHMAN v. BISOY CHAND MAHTAR* (1900) . . . I. L. R., 28 Calc., 293

ZANZIBAR.

—application of Bom. Reg. II of 1827, s. 21, cl. 1, to—

See JURISDICTION OF CIVIL COURT
CASTE . . . I. L. R., 26 Bom., 174

—Law of Zanzibar—Lands taken for public purposes—Zanzibar Order in Council, 1884—Indian Land Acquisition Act, 1893, s. 6—Compensation—Incidents of land governed by the local law—Mahomedan law of compensation—Buildings erected by Government on the plaintiff's land without authority—The lands of the plain-

thereon by the said Government without authority: Held that (1) as regards the lands, the plaintiffs are entitled under the said Act to the market value thereof at the date of service of notice under s. 6, including such actual speculative advance therein as had already taken place in consequence of the railway scheme, but excluding any future speculative advance from the like cause; (2) that, as regards the buildings, English law applied, under the Order in Council of 1884 and the subsequent treaty of 1888.

